

The South Carolina State Conference of
the NAACP, et al v. Alexander, et al
CA No.: 3:21-cv-03302-MGL-TJH-RMG

EXHIBIT A

*Senate and House Defendants' Daubert Motion in
Limine to Exclude Reports, Opinions, and
Testimony of Dr. Joseph Bagley*

Transcript of June 29, 2022 Deposition of
Joseph Bagley, Ph.D.

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION
THE SOUTH CAROLINA STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

vs. CASE NO. 3:21-CV-03302-MBS
TJH-RMG
THOMAS C. ALEXANDER, et al.,
Defendants.

VIDEO TELECONFERENCE
DEPOSITION OF: JOSEPH BAGLEY, PhD
DATE: June 29, 2022
TIME: 10:00 a.m.
LOCATION: Virtual - Zoom
TAKEN BY: Counsel for the Senate
Defendants
REPORTED BY: Roxanne Easterwood, RPR

Joseph Bagley , PhD
The South Carolina State Confvs.McMaster/Alexander

June 29, 2022

<p>1 APPEARANCES OF COUNSEL: 2 3 ATTORNEYS FOR PLAINTIFFS: 4 NAACP Legal Defense & Educational Fund, Inc. 5 By: Antonio Ingram, II Leah C. Aden John S. Cusick 6 Tanveer Singh Princess Jefferson 7 40 Rector Street, 5th Floor New York, NY 10006 8 (212) 965-7715 aingram@naacpldf.org 9 laden@naacpldf.org jcusick@naacpldf.org 10 11 American Civil Liberties Union 12 Foundation By: Samantha Osaki 13 915 15th Street, NW Washington, DC 20005 14 (202) 457-0800 sosaki@aclu.org 15 16 ATTORNEYS FOR HOUSE DEFENDANTS: 17 Nexsen Pruet, LLC By: Michael A. Parente 18 Jennifer Hollingsworth 1101 Johnson Avenue, Suite 300 19 Myrtle Beach, SC 29577 (803) 771-8900 20 mparente@nexsenpruet.com jhollingsworth@nexsenpruet.com 21 22 23 24 25</p>	Page 2	<p>1 PROCEEDINGS 2 * * * * * 3 JOSEPH BAGLEY, PhD 4 being first duly sworn, testified as follows: 5 EXAMINATION 6 BY MR. TRAYWICK: 7 Q. Good morning, Dr. Bagley. Thank you 8 for your patience as we've both kind of dealt with 9 technical difficulties. We've met before and just 10 talked off the record. I've introduced myself. 11 My name is Lisle Traywick. I'm with the law firm 12 of Robinson Gray Stepp & Laffitte. We are 13 representing the Senate defendants in this action 14 filed by the South Carolina Conference of the 15 NAACP and Taiwan Scott against our clients and 16 others. We met before in your previous 17 deposition, in the House deposition; is that 18 right? 19 A. Yes, sir. 20 Q. So today we're here to talk about the 21 Congressional plan litigation, right? 22 A. That's right. 23 Q. Just to ensure we're reading from the 24 same sheet of music, the rule requires me to go 25 over the rules of the deposition. So I'll do that</p>	Page 4
<p>1 ATTORNEYS FOR SENATE DEFENDANTS: 2 Robinson Gray, LLC By: Vordman Carlisle Traywick, III 3 Robert E. Tyson Cynthia Nygord 4 1310 Gadsden Street Columbia, SC 29201 5 (803) 929-1400 ltraywick@robinsongray.com 6 rtyson@robinsongray.com cnygord@robinsongray.com 7 8 ATTORNEYS FOR ELECTION COMMISSION 9 DEFENDANTS: 10 Burr & Forman, LLP By: Jane W. Trinkley 11 1221 Main Street, Suite 1800 Columbia, SC 29201 12 (803) 753-3241 jtrinkley@burr.com 13 14 15 16 17 (INDEX AT REAR OF TRANSCRIPT) 18 19 20 21 22 23 24 25</p>	Page 3	<p>1 briefly. I know you're familiar with them. 2 If you have any questions about my 3 questions, please direct those towards me. If I 4 ask you a question that you don't understand or 5 that's a bad question, which is bound to happen, 6 please ask me to rephrase. I'm happy to do so. 7 I'm certainly not trying to trick you. 8 This isn't an endurance contest, so if 9 at any time you need to take a break, go to the 10 restroom, get some water, or just take a minute, 11 I'm happy to accommodate you in that regard. Just 12 let me know. And I'll try to work in some logical 13 breaks as well for lunch and things like that? 14 If you hear opposing counsel object to 15 my question, you still need to answer the 16 question. But if he instructs you not to answer, 17 only then can you not answer the question. 18 But aside from that, I'm ready to 19 begin, if you are. 20 A. Yes, sir, I am. 21 Q. Can you please state your full name, 22 for the record? 23 A. Joseph Mark Bagley. 24 Q. What is your date of birth, 25 Dr. Bagley?</p>	Page 5

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Page 6	<p>1 A. February 23, 1981.</p> <p>2 Q. What is your address, please?</p> <p>3 A. 2823 Middleham, M-I-D-D-L-E-H-A-M,</p> <p>4 Court, Tucker, Georgia 30084.</p> <p>5 Q. Is that outside of Atlanta?</p> <p>6 A. Yes, sir, just right outside of the</p> <p>7 northeast corner.</p> <p>8 Q. Good deal.</p> <p>9 MR. TRAYWICK: Dr. Bagley, I'm going</p> <p>10 to mark as Exhibit 1 to your deposition the</p> <p>11 subpoena and deposition notice that we served on</p> <p>12 you. And we'll try to get that in Exhibit Share.</p> <p>13 (Exhibit 1, Notice of Deposition,</p> <p>14 Certificate of Service, Acceptance of Service,</p> <p>15 Subpoena Duces Tecum, marked for identification.)</p> <p>16 MS. NYGORD: Exhibit 1 should be in</p> <p>17 there.</p> <p>18 MR. TRAYWICK: Let me relaunch. Off</p> <p>19 the record.</p> <p>20 (A recess was taken.)</p> <p>21 MR. TRAYWICK: Back again.</p> <p>22 BY MR. TRAYWICK:</p> <p>23 Q. Thanks, again, for you patience with</p> <p>24 that, Dr. Bagley. Can you see in Exhibit Share a</p> <p>25 document?</p>	Page 8
Page 7	<p>1 A. No, sir, I do not.</p> <p>2 COURT REPORTER: You will have to</p> <p>3 refresh.</p> <p>4 BY MR. TRAYWICK:</p> <p>5 Q. Dr. Bagley, I'm going to show you what</p> <p>6 we're marking as Exhibit 1 to your deposition.</p> <p>7 A. All right.</p> <p>8 Q. Have you seen this document before?</p> <p>9 A. Yes.</p> <p>10 Q. What is it?</p> <p>11 A. This is a notice of taking of my</p> <p>12 deposition.</p> <p>13 Q. Did you also see the subpoena that was</p> <p>14 attached thereto?</p> <p>15 A. I did.</p> <p>16 Q. Did you bring any documents with you</p> <p>17 today in response to this subpoena?</p> <p>18 A. No. I understand that the attorneys</p> <p>19 had turned over some of what was requested. But I</p> <p>20 haven't brought anything with me today other than</p> <p>21 my reports, a clean copy of my report and my</p> <p>22 rebuttal report.</p> <p>23 Q. Did you help furnish information to</p> <p>24 them to provide responses to the subpoena?</p> <p>25 A. I understand that they have submitted</p>	Page 9

1 some things that they had already gotten from me,

2 some of the things that were already requested.

3 Q. So were you asked to pull any of the

4 documents identified in Exhibit A to the subpoena

5 that was served upon you?

6 A. No.

7 Q. Dr. Bagley, what did you do to prepare

8 for your deposition today?

9 A. Mostly just read over my report. It's

10 been a while since I entered it. So just

11 refreshed myself. It's a lot of information.

12 Q. Which report?

13 A. So this is my report from the

14 Congressional phase, and then I have a rebuttal --

15 brief rebuttal report, as well, in this phase.

16 Q. Did you do anything else to prepare

17 for your deposition?

18 A. No. I just have had brief

19 conversations with the attorneys, just sort of

20 logistics and, you know, where we're going to be,

21 what we're going to expect, that kind of thing.

22 MR. TRAYWICK: I'm going to mark as

23 Exhibit 2 to your deposition what was produced in

24 connection with your reports as your CV.

25 (Exhibit 2, Bagley CV, marked for

1 identification.)

2 BY MR. TRAYWICK:

3 Q. Do you see that on your screen,

4 Dr. Bagley?

5 A. I do.

6 Q. Is that the most current copy or most

7 current version of your curriculum vitae?

8 A. It is.

9 Q. Would you mind giving me the benefit

10 of your educational background, please?

11 A. Sure. I have a BA and MA from Auburn

12 University in history, a PhD from Georgia State in

13 the same, and focussed on American Constitutional

14 and Legal History, 19th and 20th Century American

15 Politics and Law.

16 Q. What was the topic of your

17 dissertation?

18 A. The Politics of Race and School

19 Desegregation in Alabama.

20 Q. Has that been the primary focus of

21 your research and studies?

22 A. It certainly was up to that point.

23 I've broadened that out in more recent years.

24 Q. What do you mean by broadened it out?

25 A. I mean I began to shift towards the

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Page 10	<p>1 second book project on voting rights several years 2 ago.</p> <p>3 Q. When did you begin that?</p> <p>4 A. I would say circa 2018 or so.</p> <p>5 Q. Is that still a work in progress, 6 Dr. Bagley?</p> <p>7 A. Oh, very much, yes.</p> <p>8 Q. Do you have a tentative title or 9 subject of it?</p> <p>10 A. Title, no. Subject, sure. I'm 11 looking at the struggle for voting rights in the 12 Deep South broadly and, you know, sort of legal 13 journey that that has gone through and the 14 attendant politics. Sort of a similar framework, 15 if you will, to the first book.</p> <p>16 Q. What was the first book?</p> <p>17 A. It was a distillation of the 18 dissertation, The Politics of White Rights.</p> <p>19 Q. On what state or regions did that 20 focus?</p> <p>21 A. That focussed on Alabama. This is an 22 outgrowth of the dissertation.</p> <p>23 Q. Would you mind giving me your 24 professional background, please?</p> <p>25 A. I have worked for Georgia State in one</p>	Page 12	<p>1 case, as well as in People First versus Merrill, 2 which was really related to Voting Act status 3 during the pandemic, in Alabama. Submitted 4 reports in that case and testified at trial.</p> <p>5 Those are the only cases wherein I have entered 6 reports and testified.</p> <p>7 Q. Were both of those cases in Federal 8 Court in Alabama?</p> <p>9 A. Yes.</p> <p>10 Q. In Milligan, what fields were you 11 qualified as an expert in?</p> <p>12 A. I can't remember exactly, but I want 13 to say it was political history in Alabama or -- 14 well, and in -- I believe the language was 15 political history in Alabama and historiography or 16 -- or there was something in addition to that. It 17 was more broad. I don't remember the exact 18 language -- historical methodology, maybe, 19 something like that.</p> <p>20 Q. You said that that was in the context 21 of a preliminary injunction; did I hear that 22 right?</p> <p>23 A. That's correct.</p> <p>24 Q. What's the status of that case?</p> <p>25 A. That unanimous decision of three-judge</p>
Page 11	<p>1 capacity or another since I graduated. Actually, 2 I was hired by Georgia State as a visiting 3 lecturer and hired by Perimeter College at the 4 same time it was consolidating with Georgia State, 5 as a lecturer, and then got hired on the tenured 6 tract, and actually am up for tenure this year and 7 should be promoted as well.</p> <p>8 Q. Congratulations.</p> <p>9 A. Thank you.</p> <p>10 Q. What is technically your title now?</p> <p>11 A. Right now I am assistant professor of 12 history. I'll be associate professor of history 13 if I don't screw it up by next year.</p> <p>14 Q. Good luck with that.</p> <p>15 A. Thank you.</p> <p>16 Q. Dr. Bagley, can you explain any prior 17 cases in which you were a consulting or testifying 18 expert, please?</p> <p>19 A. Sure. I worked on -- or I suppose I 20 am currently retained in the Milligan versus 21 Merrill case, which is a redistricting case 22 involving Alabama. I testified at a preliminary 23 injunction hearing in that case. I have submitted 24 reports in that case.</p> <p>25 I was certified as an expert in that</p>	Page 13	<p>1 court, that injunction was entered, but it was 2 stayed by the Supreme Court.</p> <p>3 Q. Do you recall what the plaintiffs' 4 claims were in Milligan, Dr. Bagley, what legal 5 claims they brought?</p> <p>6 A. Yes. I believe it was a Section 2, 7 Voting Rights Act claim. Maybe a racial 8 gerrymandering claim as well.</p> <p>9 Q. What did your report discuss there 10 where you were qualified as an expert in political 11 history in Alabama and either historiography or 12 historical methodology?</p> <p>13 A. So that was a Senate factors report. 14 I think I looked at maybe five of the Senate 15 factors in my assessment in that report.</p> <p>16 Q. If you will, can we turn to Merrill? 17 I believe you indicated that was a trial; is that 18 right?</p> <p>19 A. You mean People First? Yes, I'm 20 sorry, that was -- that's what you mean?</p> <p>21 Q. Yes, sir.</p> <p>22 A. Yes.</p> <p>23 Q. Were you qualified as an expert in 24 that case?</p> <p>25 A. Yes. I don't -- I actually looked</p>

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<p style="text-align: right;">Page 14</p> <p>1 somewhat recently at the judge's opinion, and I</p> <p>2 don't know that I found exactly the language as to</p> <p>3 what I was certified as an expert in.</p> <p>4 Q. So, well, I guess, what was your --</p> <p>5 what was the subject of your testimony?</p> <p>6 A. The history of discrimination in</p> <p>7 Alabama. Like, a -- you know, it was also a</p> <p>8 Senate factors report, so identifying which of the</p> <p>9 Senate factors are present.</p> <p>10 Q. You said that was in the context of</p> <p>11 voting laws during the pandemic?</p> <p>12 A. That's right.</p> <p>13 Q. What was the outcome of that case?</p> <p>14 A. So the plaintiffs won at trial in that</p> <p>15 case as well. I believe it was partially</p> <p>16 reversed. Some of that was upheld. I don't</p> <p>17 remember the exact particulars of, you know, what</p> <p>18 got reversed and what was upheld. But yeah, that</p> <p>19 was the disposition, as I recall.</p> <p>20 Q. Would that have been by an appellate</p> <p>21 court or by the U.S. Supreme Court?</p> <p>22 A. I believe it went all the way through</p> <p>23 the Supreme Court. I don't remember exactly. It</p> <p>24 went through the 11th Circuit, obviously.</p> <p>25 Q. Thank you for that.</p>	<p style="text-align: right;">Page 16</p> <p>1 have been via email?</p> <p>2 A. 80 percent.</p> <p>3 Q. Have you contacted -- have you had any</p> <p>4 contact with any other lawyers on the plaintiffs'</p> <p>5 team, to your recollection?</p> <p>6 A. Those that are on this call.</p> <p>7 Obviously, Mr. Ingram, who is here, and</p> <p>8 Mr. Cusick.</p> <p>9 Q. So Mr. Ingram, Mr. Cusick, and</p> <p>10 Ms. Aden?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Any other lawyers from the plaintiffs'</p> <p>13 team?</p> <p>14 A. Not on this matter.</p> <p>15 Q. How about any other third parties,</p> <p>16 have you discussed your opinions offered in this</p> <p>17 case with any other third parties, aside from the</p> <p>18 three counsel you just named for the Legal Defense</p> <p>19 Fund?</p> <p>20 A. No, I have not.</p> <p>21 Q. Did you discuss your deposition</p> <p>22 testimony with anyone else, aside from those three</p> <p>23 attorneys?</p> <p>24 A. No.</p> <p>25 Q. What were you asked to do?</p>
<p style="text-align: right;">Page 15</p> <p>1 Dr. Bagley, for what purpose were you</p> <p>2 retained in this matter?</p> <p>3 A. So in this matter I was asked to look</p> <p>4 at the process surrounding the General Assembly's</p> <p>5 enactment of the laws that have adopted the</p> <p>6 current Congressional plan and to provide my</p> <p>7 opinions as to if there might be an inference of</p> <p>8 discriminatory intent in the passage of that plan.</p> <p>9 Q. When were you first contacted about</p> <p>10 this matter?</p> <p>11 A. Last fall, I suppose. I don't</p> <p>12 remember exactly when.</p> <p>13 Q. By whom?</p> <p>14 A. By the Legal Defense Fund.</p> <p>15 Q. Who in the Legal Defense Fund?</p> <p>16 A. I don't remember who it was that first</p> <p>17 reached out, but probably Leah Aden.</p> <p>18 Q. Would that have been by telephone or</p> <p>19 the email?</p> <p>20 A. Email, if memory serves.</p> <p>21 Q. Has email been your primary mode of</p> <p>22 correspondence with the LDF lawyers?</p> <p>23 A. Primary, I would say yes.</p> <p>24 Q. If you had to assign a percentage to</p> <p>25 your communications, about what percentage would</p>	<p style="text-align: right;">Page 17</p> <p>1 A. Like I say, I was asked to examine the</p> <p>2 process surrounding the enactment of this</p> <p>3 Congressional plan and to determine if, in my</p> <p>4 opinion, there was evidence that could be provided</p> <p>5 to the court that either would or would not</p> <p>6 support, you know, determination of discriminatory</p> <p>7 intent.</p> <p>8 Q. Were you asked to assist with the</p> <p>9 Congressional plan litigation before, during, or</p> <p>10 after your retention to testify as an expert in</p> <p>11 the House plan litigation?</p> <p>12 A. I believe I was retained</p> <p>13 simultaneously on both matters.</p> <p>14 MR. TRAYWICK: Now I'm going to mark as</p> <p>15 Exhibit 3 to your deposition some invoices that we</p> <p>16 received late yesterday evening. If you could let</p> <p>17 me know when those appear on your screen.</p> <p>18 (Exhibit 3, Invoices with Attached</p> <p>19 Email Cover Pages, Bates SCNAACP 3D 11412-11419,</p> <p>20 marked for identification.)</p> <p>21 THE WITNESS: Mr. Ingram is refreshing.</p> <p>22 He's not seeing them as yet, but there it is.</p> <p>23 Okay, we have it.</p> <p>24 BY MR. TRAYWICK:</p> <p>25 Q. In the email you address someone named</p>

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<p style="text-align: right;">Page 18</p> <p>1 Meghana. Am I pronouncing that correctly?</p> <p>2 A. Yes.</p> <p>3 Q. Who is she?</p> <p>4 A. She is an admin at LDF in New York, an</p> <p>5 administrative assistant.</p> <p>6 Q. Thank you. If you could scroll down</p> <p>7 to the second page, please?</p> <p>8 A. Okay.</p> <p>9 Q. Is that a copy of one of your invoices</p> <p>10 submitted in this matter?</p> <p>11 A. It is.</p> <p>12 Q. It begins on the date</p> <p>13 January 28, 2022; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. This invoice in particular runs</p> <p>16 through February 10, '22; is that also correct?</p> <p>17 A. Yes.</p> <p>18 Q. Did you separate out time that you</p> <p>19 spent on the House plan litigation versus the</p> <p>20 Congressional plan litigation?</p> <p>21 A. Yes, I believe those are separate</p> <p>22 invoices.</p> <p>23 Q. Do you know --</p> <p>24 A. Just in terms of -- I will say just</p> <p>25 because the timelines are different. I don't know</p>	<p style="text-align: right;">Page 20</p> <p>1 A. The balance on this invoice is \$6,900.</p> <p>2 Q. How many hours did you spend from</p> <p>3 January 28th to February 10th?</p> <p>4 A. 46.</p> <p>5 Q. During that time, what would that have</p> <p>6 primarily covered? Would that have been House or</p> <p>7 Congressional?</p> <p>8 A. This would be Congressional.</p> <p>9 Q. Do you recall when you submitted a</p> <p>10 report for the House plan litigation?</p> <p>11 A. I do not.</p> <p>12 Q. If you could scroll down to what is</p> <p>13 the fourth page of that PDF, if you don't mind?</p> <p>14 A. Okay.</p> <p>15 Q. This appears to be Invoice Number 3?</p> <p>16 A. Yes. Yes.</p> <p>17 Q. So we didn't see Invoice Number 1</p> <p>18 included. So would it be fair to say that that</p> <p>19 related exclusively to the House plan litigation?</p> <p>20 A. Correct.</p> <p>21 Q. Thank you for that clarification.</p> <p>22 At the top of this Invoice Number 3,</p> <p>23 it says "Phase 3."</p> <p>24 Can you explain how you phased out</p> <p>25 various work in this case and what that means?</p>
<p style="text-align: right;">Page 19</p> <p>1 that I separated them necessarily as this is --</p> <p>2 you know, this is a House invoice; this is a</p> <p>3 Congressional invoice. I think this is in terms</p> <p>4 of -- I think my agreement stipulates that, you</p> <p>5 know, every several weeks or month or two I'm to</p> <p>6 go ahead and submit whatever hours.</p> <p>7 So the way that these phases have</p> <p>8 unfolded, I have submitted separate invoices that</p> <p>9 would amount to de facto House or Congressional</p> <p>10 invoices, if that makes sense.</p> <p>11 Q. Obviously, we can't see the entries on</p> <p>12 it. They're redacted.</p> <p>13 But in explaining your activities,</p> <p>14 would you have specified whether it related to</p> <p>15 House or Congressional redistricting?</p> <p>16 A. Yes, I think so.</p> <p>17 Q. Would you be able to itemize what was</p> <p>18 spent on each plan?</p> <p>19 A. Yes. I believe so.</p> <p>20 Q. Can you do that? Because, as you</p> <p>21 know, plaintiffs are seeking recovery in this case</p> <p>22 of, among other things, costs. So we need to know</p> <p>23 what your time is and your money.</p> <p>24 A. Sure.</p> <p>25 Q. What was the amount of this bill?</p>	<p style="text-align: right;">Page 21</p> <p>1 A. I don't remember putting that there.</p> <p>2 Probably -- I'm speculating on memory here -- that</p> <p>3 Phase 1 would be House, and Phase 2 would be maybe</p> <p>4 House rebuttal. I'd have to go back and look.</p> <p>5 Q. How many hours did you spend from</p> <p>6 February 17th until April 10th?</p> <p>7 A. 109.</p> <p>8 Q. What was the balance on this bill?</p> <p>9 A. \$16,350.</p> <p>10 Q. Again, the activity is redacted, but</p> <p>11 some of those appear to be just one letter. How</p> <p>12 would that have explained what you were doing?</p> <p>13 A. That is a quotation mark to indicate</p> <p>14 same as above.</p> <p>15 Q. Fair enough. Thank you for that</p> <p>16 clarification.</p> <p>17 A. Yes, sir.</p> <p>18 Q. If you could go to Page Number 5 of</p> <p>19 that PDF, if you don't mind, Dr. Bagley.</p> <p>20 A. All right.</p> <p>21 Q. In that email you indicate some</p> <p>22 overlap. Can you explain what you meant there?</p> <p>23 Does that mean overlap between House plan</p> <p>24 litigation and Congressional litigation, or what</p> <p>25 did you mean by that?</p>

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Page 22	<p>1 A. Looks like the email reads: "With 2 some overlap in terms of deposition transcript 3 review," which would indicate, presumably, that I 4 was reviewing the transcript from our last 5 deposition. 6 Q. If you will scroll down to Page 6 of 7 that PDF, if you don't mind, please. 8 A. Okay. 9 Q. That appears to be just another a 10 duplicate of Invoice Number 3, right? 11 A. It does. 12 Q. If you wouldn't mind flipping to the 13 end of the PDF on Page 8. How many hours did you 14 spend on this case from April 21st to May 3rd? 15 A. 26. 16 Q. What was the amount of your bill? 17 A. \$3,900. 18 Q. Do you recall the date on which you 19 submitted your initial report in this matter? 20 A. In the Congressional phase? 21 Q. Yes, sir. 22 A. No. But I think in the copy that I 23 have here, the clean copy before me, I may have 24 that date on the last page. And it appears to be 25 April 11th.</p>	Page 24	<p>1 and roughly 6 there, so 26 or 27,000. 2 Q. That's on Invoices 2 through 4? 3 A. Yes, sir. 4 Q. Do you recall how much your first 5 invoice was for? 6 A. I genuinely do not. I would guess 7 perhaps somewhere in the range of 10,000, and 8 possibly less. 9 Q. Thank you, Dr. Bagley. 10 So we just want to talk about your 11 report. At some point you were asked to prepare a 12 report in this matter, correct? 13 A. Indeed. 14 MR. TRAYWICK: We're going to mark that 15 as an exhibit to your deposition. 16 (Exhibit 4, Dr. Bagley Congressional 17 Plan Report, marked for identification.) 18 BY MR. TRAYWICK: 19 Q. That's the 4/11/22. Do you see that, 20 Dr. Bagley, in the Exhibit Share? 21 A. Refreshing. It's not there yet, but I 22 imagine it will be shortly. Either way, as I 23 said, I do have a clean copy of that here in my 24 hands. 25 Q. If that suits, then why don't we just</p>
Page 23	<p>1 Q. What would this time have been spent 2 on after April 11th? 3 A. Say again, please. 4 Q. What would this time have been spent 5 on that post dates that initial report? 6 A. Looks like the rebuttal report that I 7 submitted in this case, which was -- this is dated 8 May 3rd. 9 Q. Dr. Bagley, does the top of that 10 invoice say "Congressional Trende Rebuttal/House 11 Trial Prep"? 12 A. It does. 13 Q. Is there potentially some overlap on 14 this bill? 15 A. Yes. 16 Q. Again, would you mind itemizing that 17 for us? 18 A. Yes. Yes, we can do that. 19 Q. Thank you, sir. I appreciate that. 20 A. Uh-huh. 21 Q. So overall, how much have plaintiffs' 22 counsel paid you in this matter? 23 A. What did we just say? There's 24 slightly under 4,000 on that, which would bring it 25 to 20, roughly, given that one is a duplicate,</p>	Page 25	<p>1 move forward with that. 2 A. Sure. 3 Q. I'll represent to you that I'm reading 4 the same copy. 5 A. Got it. We have it now as well. So 6 either way. 7 Q. Great. Thank you. 8 Before we get to that, you mentioned 9 you had some things present with you today. Can 10 you tell me what all you have present with you 11 right now at your deposition? 12 A. All I have is a copy of the report and 13 the rebuttal report and coffee. 14 Q. Same. Have you taken any notes on 15 that report? 16 A. No. 17 Q. I know I asked you why you were -- 18 what you were asked to do, but can you explain to 19 me what fields you're seeking to be qualified as 20 an expert in to testify in this matter? 21 A. American political history, southern 22 race relations, history of southern politics and 23 law. 24 Q. I know we just went through your 25 bills. But as per this specific report, do you</p>

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<p style="text-align: right;">Page 26</p> <p>1 recall how long it took you to prepare it?</p> <p>2 A. I don't. I would have to go back to</p> <p>3 those invoices and tally those hours up, which we</p> <p>4 can do. But, I mean, I would say tens of hours.</p> <p>5 Q. Tens of hours, okay. Did that consist</p> <p>6 primarily of drafting or of other things?</p> <p>7 A. Research; drafting; refining; the</p> <p>8 writing itself, obviously; a lot of reading, of</p> <p>9 course.</p> <p>10 Q. To that end, upon which authorities</p> <p>11 did you rely to prepare this report?</p> <p>12 A. Everything I relied on -- this is sort</p> <p>13 of standard for the field and for historiography.</p> <p>14 Everything I've relied upon is in the footnotes.</p> <p>15 The footnotes are pretty thorough. So any and</p> <p>16 everything that I relied upon is in those notes.</p> <p>17 Q. Do you have copies of any of those</p> <p>18 sources or links or anything?</p> <p>19 A. Some of them are books, so yes. Some</p> <p>20 of them are, obviously, cases that are accessible</p> <p>21 online. Some of them are articles that are</p> <p>22 online. Some of them are, you know, from</p> <p>23 newspapers, most of which these days are</p> <p>24 accessible online, and so on.</p> <p>25 In terms of physical copies, I guess</p>	<p style="text-align: right;">Page 28</p> <p>1 discussing there?</p> <p>2 A. This appears to be where LDF had sent</p> <p>3 me some transcripts of some of the hearings and a,</p> <p>4 sort of, list of Senate and House meetings and</p> <p>5 hearings to review.</p> <p>6 Q. Beside those hearings, there are some</p> <p>7 parenthesis with what appear to be time stamps.</p> <p>8 Do you know what those relate to?</p> <p>9 A. It says on there: "Relevant portion</p> <p>10 transcribed." So that would reflect the portions</p> <p>11 that have been transcribed.</p> <p>12 Q. Transcribed by whom?</p> <p>13 A. I don't know if it was a court</p> <p>14 reporter or if it was a transcribing service. I</p> <p>15 don't remember. It's reflected at the bottom of</p> <p>16 the transcripts.</p> <p>17 Q. So are you saying --</p> <p>18 A. Those are publicly available hearings.</p> <p>19 It was just helpful to have, I think, the actual</p> <p>20 print, you understand. But the videos of these</p> <p>21 are on the House and the Senate -- the Senate</p> <p>22 Redistricting Subcommittee's website and the House</p> <p>23 Ad Hoc Committee Redistricting website.</p> <p>24 Q. Those are transcribed in full, right?</p> <p>25 I don't want to misunderstand what you're saying.</p>
<p style="text-align: right;">Page 27</p> <p>1 some of it I have, and then some of it I don't.</p> <p>2 Q. Did you rely on any other sources that</p> <p>3 are not listed in your report?</p> <p>4 A. No. Everything that it relied on is</p> <p>5 in there.</p> <p>6 MR. TRAYWICK: Dr. Bagley, I'm going</p> <p>7 to now mark, I believe -- are we on 4 or 5, Madam</p> <p>8 Court Reporter?</p> <p>9 MS. NYGORD: This will be Number 5.</p> <p>10 MR. TRAYWICK: I'm going to mark as</p> <p>11 Exhibit Number 5 some emails that we received a</p> <p>12 little after 10:00 last night. If you will let me</p> <p>13 know when those appear on your screen, that would</p> <p>14 be great.</p> <p>15 (Exhibit 5, Email Correspondence, Bates</p> <p>16 SCNAACP CD 11420-11423, marked for</p> <p>17 identification.)</p> <p>18 THE WITNESS: Okay.</p> <p>19 BY MR. TRAYWICK:</p> <p>20 Q. Did you have a chance to review those?</p> <p>21 A. I see it, yes, sir.</p> <p>22 Q. You recognize these emails,</p> <p>23 Dr. Bagley?</p> <p>24 A. I do.</p> <p>25 Q. The first one there, what are you</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Yes.</p> <p>2 Q. So these time stamps aren't just as to</p> <p>3 what's transcribed, are they?</p> <p>4 A. Well, where I'm seeing under where it</p> <p>5 says "Full House," the time stamps say: "Relevant</p> <p>6 portion transcribed," but there are other time</p> <p>7 stamps.</p> <p>8 I think it may just be the length of</p> <p>9 the video, actually.</p> <p>10 Q. So how about the Senate Redistricting</p> <p>11 Subcommittee ones above? What do those time</p> <p>12 stamps denote?</p> <p>13 A. Honestly, I believe that's the length</p> <p>14 of the video.</p> <p>15 Q. Then the full Senate down there at the</p> <p>16 bottom?</p> <p>17 A. Yes.</p> <p>18 Q. So do you know what those time stamps</p> <p>19 correlate to?</p> <p>20 A. I would assume the same thing, the</p> <p>21 length of the video.</p> <p>22 Q. If you can scroll down to Page 3 of</p> <p>23 that PDF, if you don't mind, Dr. Bagley.</p> <p>24 A. Okay.</p> <p>25 Q. Do you recognize this email?</p>

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<p style="text-align: right;">Page 30</p> <p>1 A. I do.</p> <p>2 Q. You received it?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know what those time stamps</p> <p>5 correlate to on the various meetings that are</p> <p>6 listed on the email?</p> <p>7 A. Under Senate Judiciary Redistricting</p> <p>8 Subcommittee, those appear to be the length of the</p> <p>9 video.</p> <p>10 Q. Do you know why these were provided to</p> <p>11 you?</p> <p>12 A. This was simply flagging the relevant</p> <p>13 hearings in terms of the passage of this report --</p> <p>14 I mean, the passage of this, you know, law that</p> <p>15 enacted the map.</p> <p>16 Q. If you will scroll to the last page of</p> <p>17 the PDF, if you don't mind, Page 4. What is being</p> <p>18 conveyed by plaintiffs' counsel to you there?</p> <p>19 A. They said they had filed a second</p> <p>20 amended complaint, added additional claims</p> <p>21 regarding the newly enacted map: "Attached is a</p> <p>22 copy, and attached is the expert report of</p> <p>23 Dr. Woodard," which would have been in the House</p> <p>24 phase of this case.</p> <p>25 Q. Dr. Bagley, are these the only emails</p>	<p style="text-align: right;">Page 32</p> <p>1 Are you asserting that all of the remainder of</p> <p>2 your emails are privileged?</p> <p>3 A. Yes.</p> <p>4 MR. TRAYWICK: Then we would ask that</p> <p>5 you provide a privilege log to that effect that</p> <p>6 logs all of those emails, or plaintiffs' counsel.</p> <p>7 MR. INGRAM: Objection. He's not an</p> <p>8 attorney.</p> <p>9 MR. TRAYWICK: I said "or plaintiffs'</p> <p>10 counsel," Mr. Ingram. Thank you.</p> <p>11 BY MR. TRAYWICK:</p> <p>12 Q. During your last deposition in the</p> <p>13 House plan litigation, you mentioned you had taken</p> <p>14 a lot of notes on the various legislative</p> <p>15 hearings. What would those notes have been about?</p> <p>16 A. Very straightforward: time stamped,</p> <p>17 this is who said what. I mean, as you know, or as</p> <p>18 you even just saw with these time stamps, these</p> <p>19 are long meetings, long hearings. A lot is said,</p> <p>20 you know, and it's helpful for me to be able to</p> <p>21 distill, you know, what is relevant to the inquiry</p> <p>22 here versus, you know ...</p> <p>23 As you know, Chairman Rankin and</p> <p>24 Chairman Jordan are both very -- seem like good</p> <p>25 guys, very jovial. So there's a lot of, you know,</p>
<p style="text-align: right;">Page 31</p> <p>1 from plaintiffs' counsel that provided facts or</p> <p>2 data for you to look into or rely on for</p> <p>3 formulating your report?</p> <p>4 A. Yes.</p> <p>5 Q. There are no other ones?</p> <p>6 A. No, not as you've described.</p> <p>7 Q. Do you have any emails with</p> <p>8 plaintiffs' counsel that identify assumptions that</p> <p>9 they have provided to you?</p> <p>10 A. No.</p> <p>11 Q. So it's your contention that all of</p> <p>12 those have been produced?</p> <p>13 A. Yes.</p> <p>14 Q. Have you personally undertaken that</p> <p>15 review?</p> <p>16 A. Yeah. I mean, I was asked -- well,</p> <p>17 could you re-ask the question again?</p> <p>18 Q. Have you personally looked in your</p> <p>19 emails to see if what was produced last night is</p> <p>20 the sum total?</p> <p>21 A. Yes. Yes.</p> <p>22 Q. You're confirming that no other emails</p> <p>23 regarding facts, data, or assumptions exist?</p> <p>24 A. Correct.</p> <p>25 Q. Now, I want to make sure I understand.</p>	<p style="text-align: right;">Page 33</p> <p>1 just friendly bantering back and forth in these</p> <p>2 public hearings, for example. So it would be</p> <p>3 useful for me to say, all right, you know, from</p> <p>4 10 minutes and 30 seconds to 15 minutes and</p> <p>5 30 seconds there's an exchange about a peanut</p> <p>6 festival or something versus here is an actual</p> <p>7 relevant discussion, if that makes sense.</p> <p>8 Q. Sure. There were a lot of hearings,</p> <p>9 weren't there?</p> <p>10 A. There were.</p> <p>11 Q. Dr. Bagley, taking a step back to your</p> <p>12 background. Have you ever taken any courses in</p> <p>13 South Carolina history?</p> <p>14 A. Nothing specific only to South</p> <p>15 Carolina. Although, I would point out, it's</p> <p>16 fairly unusual for -- at the graduate level, to</p> <p>17 have -- it would be unusual to have a seminar, you</p> <p>18 know, focussed on one specific state.</p> <p>19 I didn't take a seminar in history of</p> <p>20 any specific state, in other words.</p> <p>21 Q. When you say that's not typical, do</p> <p>22 you mean at your institution of higher education,</p> <p>23 or at all?</p> <p>24 A. I mean anywhere. I mean, I don't --</p> <p>25 may be the case at Clemson or USC that they offer</p>

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Page 34	<p>1 graduate seminar specific to South Carolina</p> <p>2 history. I don't know. You know, but that would</p> <p>3 be the only place that I would expect for that to</p> <p>4 be the case.</p> <p>5 Q. Dr. Bagley, have you ever attended any</p> <p>6 roundtable discussions, symposia, or conferences</p> <p>7 related to South Carolina history?</p> <p>8 A. Again, nothing specifically focussed</p> <p>9 on South Carolina.</p> <p>10 Q. You have never taught South Carolina</p> <p>11 history?</p> <p>12 A. No -- well, let me say the answer is</p> <p>13 the same. I mean, in classes I've taught -- I</p> <p>14 have discussed the history of South Carolina. I</p> <p>15 have not taught a course specific to the history</p> <p>16 of South Carolina.</p> <p>17 Q. Dr. Bagley, have you ever written any</p> <p>18 articles, blogs, posts, book chapters, or any</p> <p>19 other publications on South Carolina history?</p> <p>20 A. I have not published anything specific</p> <p>21 exclusively to South Carolina.</p> <p>22 Q. Have you ever been to South Carolina?</p> <p>23 A. I have.</p> <p>24 Q. When?</p> <p>25 A. Many times. I'm trying to remember</p>	Page 36	<p>1 A. Blue Denim, and there's the Joe Bagley</p> <p>2 Band.</p> <p>3 Q. Good deal. Before writing this</p> <p>4 report, Dr. Bagley, had you done any research</p> <p>5 specific to South Carolina?</p> <p>6 A. Sorry, you cut out on me. Can you say</p> <p>7 that again?</p> <p>8 Q. Of course. Before writing this</p> <p>9 report, had you done any research specific to</p> <p>10 South Carolina?</p> <p>11 A. Not specific to South Carolina, no.</p> <p>12 Q. So you conducted the vast majority of</p> <p>13 the research reflected in your report for purposes</p> <p>14 of this litigation; is that fair to say?</p> <p>15 A. I was broadly familiar with much of</p> <p>16 the secondary literature that I cite. So in terms</p> <p>17 of secondary historical sources, that's all the</p> <p>18 material that I was familiar with beforehand.</p> <p>19 In terms of primary source research,</p> <p>20 and, of course, in terms of reviewing the record</p> <p>21 relevant to the law that was enacted here that</p> <p>22 created the map, that was all done for purposes of</p> <p>23 this litigation.</p> <p>24 Q. Dr. Bagley, are you an attorney?</p> <p>25 A. No.</p>
Page 35	<p>1 how recently. As recently as -- I don't know,</p> <p>2 three -- years ago, maybe, two. In my youth we</p> <p>3 would go to and through South Carolina quite</p> <p>4 frequently. I've been to Columbia. I've been to</p> <p>5 Charleston. I've been to Greenville.</p> <p>6 Q. You said to and through. Have you</p> <p>7 ever spent any time there, or did you just drive</p> <p>8 through those places?</p> <p>9 A. No. I have been to Charleston a</p> <p>10 number of times. I have been to Columbia. I've</p> <p>11 been to Clemson. I spent a little bit of time in</p> <p>12 all of those places.</p> <p>13 Q. Were those trips of leisure or</p> <p>14 professional related?</p> <p>15 A. Leisure or related to secondary</p> <p>16 occupation; to whit, music.</p> <p>17 Q. Sorry, your screen froze a little bit</p> <p>18 there. What is your second occupation?</p> <p>19 A. I said "music."</p> <p>20 Q. Great. What do you focus on there?</p> <p>21 Do you sing, or do you play an instrument?</p> <p>22 A. I sing and play guitar.</p> <p>23 Q. Are you in a band?</p> <p>24 A. I was.</p> <p>25 Q. What was that called?</p>	Page 37	<p>1 Q. Do you have any legal training? Have</p> <p>2 you had any semesters in law school?</p> <p>3 A. I have not had any semesters in law</p> <p>4 school. One of my PhD examination fields is U.S.</p> <p>5 Constitutional and Legal History, though. I'm a</p> <p>6 member of the American Society of Legal History.</p> <p>7 Q. Would you agree that you're not</p> <p>8 qualified to offer legal opinions?</p> <p>9 A. I would.</p> <p>10 Q. Does your report include all facts and</p> <p>11 sources on which you relied to formulate your</p> <p>12 opinions?</p> <p>13 A. It does.</p> <p>14 Q. Would you agree with me that</p> <p>15 legislative intent is a question of law for the</p> <p>16 court to determine?</p> <p>17 A. Yes.</p> <p>18 Q. Would you agree with me, based on your</p> <p>19 studies, that the Supreme Court has said past</p> <p>20 discrimination cannot, in the manner of original</p> <p>21 sin, condemn governmental action that is not</p> <p>22 itself unlawful?</p> <p>23 MR. INGRAM: Objection.</p> <p>24 BY MR. TRAYWICK:</p> <p>25 Q. You can answer.</p>

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<p style="text-align: right;">Page 38</p> <p>1 A. Are you referring to the Shelby County</p> <p>2 decision?</p> <p>3 Q. There's multiple. I believe that was</p> <p>4 City of Mobile.</p> <p>5 A. Wasn't City of Mobile superseded?</p> <p>6 Q. Right. But the Supreme Court said it</p> <p>7 multiple times in sentencing Abbott and others.</p> <p>8 Do you agree with that principle that</p> <p>9 the Supreme Court has recognized, that past</p> <p>10 discrimination can't condemn future action in --</p> <p>11 MR. INGRAM: Objection.</p> <p>12 THE WITNESS: I agree that that's what</p> <p>13 the court has said. That being said, I don't</p> <p>14 think that can follow from that that the past is</p> <p>15 irrelevant, that past discrimination is</p> <p>16 irrelevant. And the mode of inquiry that I have</p> <p>17 undertaken here asks that I review the history of</p> <p>18 discrimination.</p> <p>19 BY MR. TRAYWICK:</p> <p>20 Q. Do you agree that the court must apply</p> <p>21 a presumption of legislative good faith in</p> <p>22 determining legislative intent?</p> <p>23 A. Yes. I'm sorry, I have an echo.</p> <p>24 (Discussion off record.)</p> <p>25 BY MR. TRAYWICK:</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Sure. In this case we have</p> <p>2 legislators that, depending on the court's ruling,</p> <p>3 could be witnesses. Do you think it would be up</p> <p>4 to the court to determine their credibility?</p> <p>5 A. Insofar as they are witnesses, of</p> <p>6 course. Insofar as they are a part of the record</p> <p>7 that I reviewed, I think that's a separate issue.</p> <p>8 Q. So did you make credibility</p> <p>9 determinations into your review of the legislative</p> <p>10 record?</p> <p>11 A. I would say that I weighed all of the</p> <p>12 evidence against itself and provided a</p> <p>13 straightforward account of, you know, what I saw</p> <p>14 and what I thought was important relative to the</p> <p>15 court's decision regarding intent.</p> <p>16 Q. We'll get to that.</p> <p>17 When you say what was relevant, did</p> <p>18 you rely upon or take at face value the statements</p> <p>19 of any Republican members to show legislative</p> <p>20 intent in your report?</p> <p>21 A. I would tell you that if you watch the</p> <p>22 videos of these hearings and of these meetings,</p> <p>23 other than the chairman or the acting chairman --</p> <p>24 so that would include Senator Rankin,</p> <p>25 Representative Jordan, and at times Senator</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. Dr. Bagley, do you think it's proper</p> <p>2 for a court in determining legislative intent to</p> <p>3 just rely on the statements of a few individual</p> <p>4 legislators?</p> <p>5 A. Not exclusively, no. I would think</p> <p>6 you would take that as part of your inquiry, along</p> <p>7 with history of discrimination, statements made by</p> <p>8 the public, et cetera.</p> <p>9 Q. Do you think it's proper for a court</p> <p>10 to rely solely on comments of opponents to</p> <p>11 legislation in determining legislative intent?</p> <p>12 A. No. I think you would have to look at</p> <p>13 the full mosaic: Again, what does the public have</p> <p>14 to say; what do all legislators have to say or not</p> <p>15 say.</p> <p>16 Q. Would you agree that in a bench trial</p> <p>17 it's the role of the court to determine the</p> <p>18 credibility of witnesses?</p> <p>19 A. Sure.</p> <p>20 Q. Do you think it's the proper role of</p> <p>21 an expert to determine credibility of witnesses?</p> <p>22 A. Credibility of witnesses in a case?</p> <p>23 Q. Yes.</p> <p>24 A. If you could clarify what you mean by</p> <p>25 witnesses, I guess, is my question?</p>	<p style="text-align: right;">Page 41</p> <p>1 Campsen -- or rather, Representative Newton -- the</p> <p>2 Republican legislators are largely silent.</p> <p>3 So if there's a dearth of --</p> <p>4 comparatively, of their voices in the report, it's</p> <p>5 not because I was, you know, selective in terms of</p> <p>6 what I put in there; it's because they didn't have</p> <p>7 much to say.</p> <p>8 Q. Did you have any reason to suspect</p> <p>9 that legislators in the majority were not telling</p> <p>10 the truth in their explanation of the plan?</p> <p>11 A. Could you ask it again, Mr. Traywick?</p> <p>12 Q. Sure. I'd be glad to.</p> <p>13 Do you have any reason to believe that</p> <p>14 the legislators who did speak about the plan who</p> <p>15 were in the majority were not telling the truth?</p> <p>16 A. I wouldn't say that I have reason to</p> <p>17 believe they're, quote unquote, "not telling the</p> <p>18 truth." I think the full record and the full</p> <p>19 mosaic revealed to me that perhaps there was some</p> <p>20 obfuscation.</p> <p>21 Q. Some what?</p> <p>22 A. Obfuscation, obfuscating -- you know,</p> <p>23 for example, in my report, I talk about how, you</p> <p>24 know, perhaps there is a selective use of criteria</p> <p>25 in justifying certain decisions, but, you know,</p>

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<p style="text-align: right;">Page 42</p> <p>1 largely that a lot of that, obviously, was behind</p> <p>2 the scenes and unavailable.</p> <p>3 Q. Is it your position that every line in</p> <p>4 a redistricting plan must have every single</p> <p>5 criteria articulated to justify it?</p> <p>6 A. Not necessarily.</p> <p>7 Q. Do you believe that Chairman Rankin</p> <p>8 harbors racist motives?</p> <p>9 A. No. I don't know what is in the</p> <p>10 chairman's heart, anymore than I do, you know,</p> <p>11 Chairman Jordan or anyone else. Probably more</p> <p>12 importantly, let me say, that's not what I've been</p> <p>13 asked to ascertain.</p> <p>14 Q. Have you ever met any of them?</p> <p>15 A. I have not.</p> <p>16 Q. Dr. Bagley, just a few general</p> <p>17 questions before getting into the more specifics</p> <p>18 of your report.</p> <p>19 Did you consider anything other than</p> <p>20 race in formulating your opinions in this matter?</p> <p>21 A. Sure. You know, I've looked at the</p> <p>22 guidelines that were adopted by both bodies. I</p> <p>23 have considered any motives that they might have</p> <p>24 had.</p> <p>25 Q. Did you consider politics?</p>	<p style="text-align: right;">Page 44</p> <p>1 getting the Voting Rights Act?</p> <p>2 A. Well, yeah, but it continues from</p> <p>3 there. So this is beginning on Page 4. But I</p> <p>4 think you have to go through the entire history</p> <p>5 section, because the full shift doesn't occur</p> <p>6 until later. You know, the Republican takeover of</p> <p>7 the legislator in, I think, the '90s, the</p> <p>8 Republican takeover of the 5th in, I think, 2010</p> <p>9 and so on. So the sort of chipping sands of</p> <p>10 politics and race cover the whole history up to</p> <p>11 the present.</p> <p>12 Q. In your report, Dr. Bagley, I notice</p> <p>13 several criticisms regarding scheduling; is that</p> <p>14 fair to say?</p> <p>15 A. Criticisms from the public or from</p> <p>16 legislators, yes.</p> <p>17 Q. Well, in your report.</p> <p>18 A. Could you show me? Not to be</p> <p>19 difficult, but just so I understand.</p> <p>20 Q. Sure. If you will turn with me, it's</p> <p>21 the last half of your report, going through all of</p> <p>22 the various -- in one of the sections you appear</p> <p>23 to criticize maps being published before</p> <p>24 Thanksgiving and a meeting being scheduled after</p> <p>25 Thanksgiving. Do you recall that?</p>
<p style="text-align: right;">Page 43</p> <p>1 A. Of course.</p> <p>2 Q. Where in your report did you consider</p> <p>3 politics?</p> <p>4 A. Well, obviously, everyone in the</p> <p>5 report is identified by party. So there's no</p> <p>6 hiding the ball in terms of who is who. And then,</p> <p>7 of course, in the "History of Discrimination"</p> <p>8 section, I talk at length about the intertwining</p> <p>9 of politics and race in the South.</p> <p>10 You know, even from -- there was a</p> <p>11 time when the party of white supremacy was the</p> <p>12 Democratic party for a long time. I discuss that</p> <p>13 period. I discuss the brief period where</p> <p>14 Republicans were the party of emancipation, and I</p> <p>15 talk about the periods in the 20th century where</p> <p>16 sort of in fits and starts that began to and</p> <p>17 continued to change.</p> <p>18 And so the initial half of the report</p> <p>19 is sort of laying forth that intermingling of race</p> <p>20 and politics that's so integral to the history of</p> <p>21 the Deep South in a state like South Carolina.</p> <p>22 Q. In pretty summary fashion, right?</p> <p>23 A. Say again.</p> <p>24 Q. That was in sort of a summary fashion,</p> <p>25 right, the Subsections 3A through 3C, before</p>	<p style="text-align: right;">Page 45</p> <p>1 A. I do. That's not necessarily just my</p> <p>2 criticism, my hot take, if you will. Those are</p> <p>3 criticisms that I found in the record.</p> <p>4 Q. Are you suggesting that Senate and</p> <p>5 House staff acted in bad faith in scheduling</p> <p>6 meetings?</p> <p>7 A. I wouldn't say that myself. I would</p> <p>8 say that I'm reflecting in the report where other</p> <p>9 legislators suggested that they believe that that</p> <p>10 was the case. It's not for me to say whether I</p> <p>11 think it was the case or not.</p> <p>12 Q. Do you believe the House and Senate</p> <p>13 staff acted in bad faith when they posted maps?</p> <p>14 A. Again, I don't make any judgments in</p> <p>15 terms of bad faith regarding staff myself.</p> <p>16 Anything that I have done in here reflects</p> <p>17 comments or concerns that legislators or members</p> <p>18 of the public had.</p> <p>19 Q. So is it your position that this is an</p> <p>20 objective overview of what happened?</p> <p>21 A. It is.</p> <p>22 Q. Regardless of adverbs or anything like</p> <p>23 that describing the sequence of events as you saw</p> <p>24 it?</p> <p>25 A. That's right.</p>

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Page 46	<p>1 Q. From where did you obtain the</p> <p>2 information staff were not as available to some</p> <p>3 members as others?</p> <p>4 A. This is from watching the hearings and</p> <p>5 watching the meetings and reading the transcripts.</p> <p>6 So, for example, Senator Harpootlian said he had</p> <p>7 to hire his own map drawers. Indicated in his</p> <p>8 opinion staff were not available to him. Other</p> <p>9 legislators at times expressed similar concerns.</p> <p>10 So I, obviously, have -- I don't know</p> <p>11 what goes on behind the scenes any more than</p> <p>12 anyone else. So that determination, like anything</p> <p>13 else, is just from conveying what the legislators</p> <p>14 themselves are saying.</p> <p>15 Q. They didn't cite any examples of staff</p> <p>16 being unresponsive, did they?</p> <p>17 A. Other than, I mean, like I said,</p> <p>18 Senator Harpootlian said he had to hire his own</p> <p>19 map drawer.</p> <p>20 Q. Did he say why?</p> <p>21 A. I don't know. I don't remember what</p> <p>22 all he said to that effect, but he's very</p> <p>23 demonstrative about it.</p> <p>24 I will say, too, that just in terms of</p> <p>25 the staff dynamic, you know, Senator Rankin,</p>	Page 48	<p>1 firsthand knowledge of whether that's true or not?</p> <p>2 A. Yes. I'm just conveying what's being</p> <p>3 said -- over and over again, though, I'll point</p> <p>4 out -- but what's being said in the meetings and</p> <p>5 in the hearings. Obviously, I'm not in the</p> <p>6 Gressette Building. I'm not on Gervais Street.</p> <p>7 I'm not there to physically personally to witness</p> <p>8 it firsthand.</p> <p>9 Q. I know you're not in the Gressette</p> <p>10 Building. But when you say he had a</p> <p>11 demonstrative -- by he, I mean Senator</p> <p>12 Harpootlian -- showing of not having access to</p> <p>13 staff, I want to get more clarity on what you</p> <p>14 relied on to base that opinion.</p> <p>15 A. Well, there is a meeting or -- I don't</p> <p>16 know which meeting it was. One of the meetings</p> <p>17 where Senator Harpootlian and Mr. Opperman come in</p> <p>18 and explained the whole county plan.</p> <p>19 And there is an exchange -- I can't</p> <p>20 recall exactly who all was a part of it, but it's</p> <p>21 in the report -- where Senator Harpootlian, I</p> <p>22 believe twice, insists that he was forced to have</p> <p>23 his own map drawer.</p> <p>24 Q. Sure. But do you recall any</p> <p>25 statements from him of examples in which he was</p>
Page 47	<p>1 Chairman Jordan, they always have by their side,</p> <p>2 you know, Ms. Dean, Mr. Terreni, Ms. Benson. They</p> <p>3 will confer with them before they will answer</p> <p>4 questions, say, from black members. Oftentimes</p> <p>5 Mr. Terreni would himself be the one sort of</p> <p>6 having a contentious back-and-forth.</p> <p>7 Then, too, I would say look at the</p> <p>8 examples of when maps come out and, you know,</p> <p>9 Representative Bernstein, Senator Matthews, if</p> <p>10 memory serves, they say, "I haven't seen this map.</p> <p>11 I have no idea where this came from. I don't know</p> <p>12 why this even exists. I had no part in this."</p> <p>13 If memory serves, there was an</p> <p>14 exchange where Senator Matthews and Senator</p> <p>15 Harpootlian are saying, you know, "These outside</p> <p>16 groups might have had more of a role in this than</p> <p>17 I did in this, because I didn't have anything to</p> <p>18 do with the drawing of this map."</p> <p>19 So where you referenced, I think, is</p> <p>20 me trying to convey the impression that I got</p> <p>21 that, you know, staffer working more closely with</p> <p>22 leadership or perhaps even on their own, and they</p> <p>23 were working with even, you know, members of the</p> <p>24 minority on the committee.</p> <p>25 Q. Would you agree that you have no</p>	Page 49	<p>1 denied access to the map room or even asked to go</p> <p>2 in the map room?</p> <p>3 A. Not specifically instances where he</p> <p>4 would have said, you know, on such and such date I</p> <p>5 tried to enter the map room and was barred.</p> <p>6 Q. He never said he was denied access,</p> <p>7 though, at all?</p> <p>8 A. He never said specifically that he was</p> <p>9 denied access, no.</p> <p>10 Q. Or that he was denied access to staff,</p> <p>11 right?</p> <p>12 A. I don't know that he would have said</p> <p>13 specifically that he was denied access, no.</p> <p>14 Q. But staff would be better to ask that</p> <p>15 question, right?</p> <p>16 A. Sure.</p> <p>17 Q. Dr. Bagley, would you agree that the</p> <p>18 Senate held nine public hearings statewide about</p> <p>19 redistricting to solicit public input before map</p> <p>20 drawing?</p> <p>21 A. Yes.</p> <p>22 Q. Would you agree that the Senate held</p> <p>23 at least six hearings on the Congressional</p> <p>24 redistricting plan? I believe that would have</p> <p>25 been five subcommittees and one full committee.</p>

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<p style="text-align: right;">Page 50</p> <p>1 A. That sounds right.</p> <p>2 Q. Would you agree the House held eleven</p> <p>3 public hearings statewide about redistricting to</p> <p>4 solicit public input before map drawing?</p> <p>5 A. Yes, that sounds correct.</p> <p>6 Q. Would you agree that the House held at</p> <p>7 least four hearings on a Congressional</p> <p>8 redistricting plan? That would have been at least</p> <p>9 three subcommittees and one full committee.</p> <p>10 A. That sounds correct.</p> <p>11 Q. Can you think of any other recent</p> <p>12 legislation in South Carolina that's received that</p> <p>13 much process?</p> <p>14 A. No. Redistricting is, obviously, of</p> <p>15 paramount importance, so it's a time-consuming</p> <p>16 process.</p> <p>17 Q. Would you agree that the General</p> <p>18 Assembly here took that role seriously?</p> <p>19 A. I would agree.</p> <p>20 Q. Let's go through your report that we</p> <p>21 previously marked. Let's start on Page 2. Do you</p> <p>22 have it in front of you, Dr. Bagley?</p> <p>23 A. I do.</p> <p>24 Q. First of all, are you okay? Do you</p> <p>25 need a break or anything?</p>	<p style="text-align: right;">Page 52</p> <p>1 for scholarly publication.</p> <p>2 So following in that pattern, being</p> <p>3 that I have entered a report now in the other</p> <p>4 phase of this case, at the time that this was</p> <p>5 being written it was my intention to, you know,</p> <p>6 incorporate that into the project that I was</p> <p>7 already working on.</p> <p>8 Q. So in light of the research you have</p> <p>9 conducted for this case, you want to expand upon</p> <p>10 it in your ongoing manuscript; is that fair to</p> <p>11 say?</p> <p>12 A. Yes.</p> <p>13 Q. Thank you. Next, down to the third</p> <p>14 full paragraph on Page 2, Dr. Bagley, you say you</p> <p>15 have been certified as an expert by courts in all</p> <p>16 previous voting rights litigation. That's twice,</p> <p>17 correct?</p> <p>18 A. That is in the Milligan case and the</p> <p>19 People First case in terms of when I was certified</p> <p>20 and actually testified.</p> <p>21 Q. Both were in the Northern District of</p> <p>22 Alabama; is that right?</p> <p>23 A. Yes.</p> <p>24 Q. On Page 3, can you please explain the,</p> <p>25 quote, "ongoing record of discrimination" to which</p>
<p style="text-align: right;">Page 51</p> <p>1 A. I'm okay for now.</p> <p>2 Q. Just speak up if you need one. I'll</p> <p>3 try to work in a logical one, but I want to put</p> <p>4 the ball in your court, too. Just speak up.</p> <p>5 A. I appreciate it.</p> <p>6 Q. Thank you, Dr. Bagley.</p> <p>7 So in that first paragraph regarding</p> <p>8 your credentials, you mention, "Current projects</p> <p>9 include a book manuscript." Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. In your initial report in the House</p> <p>12 plan, it says, "Examining the history of the</p> <p>13 struggle for voting rights in the South," and it</p> <p>14 stopped there. In this version of the report it</p> <p>15 now says, "Focussing on Alabama, Georgia, and</p> <p>16 South Carolina."</p> <p>17 What's the reason for that change?</p> <p>18 A. As you probably know, anyone who does</p> <p>19 this kind of work, particularly when you submit</p> <p>20 full-on, lengthy, detailed reports to court,</p> <p>21 experts like Mr. Ruoff or Vernon Burton, people of</p> <p>22 this nature, they will typically, you know, find a</p> <p>23 way to publish that and have, you know, something</p> <p>24 distilled, in the way that my book was distilled</p> <p>25 from my dissertation, a distilled version of that</p>	<p style="text-align: right;">Page 53</p> <p>1 you allude?</p> <p>2 A. Where is that?</p> <p>3 Q. Sure. It's at the bottom of the very</p> <p>4 first paragraph under Section 2, "Purpose,</p> <p>5 Methodology, Summary Findings."</p> <p>6 A. Just meaning throughout history.</p> <p>7 Q. Can you put dates on that? What do</p> <p>8 you mean by ongoing? Sorry, I'm not trying to --</p> <p>9 I'm trying --</p> <p>10 A. Well, I would say, as I said in the</p> <p>11 report, I'm not trying to make the determination</p> <p>12 for the court that there is, in fact, legally</p> <p>13 speaking, discriminatory intent here. So I don't</p> <p>14 mean to infer that by saying "ongoing," if that's</p> <p>15 what you're getting at.</p> <p>16 Q. That's fair. That's helpful. I</p> <p>17 appreciate that clarification. I wanted to see if</p> <p>18 you had specific examples in mind of what you</p> <p>19 meant by "ongoing."</p> <p>20 A. Well, anything that would be in the</p> <p>21 report that, say, is not from the redemption</p> <p>22 period, but it's further into the 20th century and</p> <p>23 into the latter half of the 20th century, you</p> <p>24 know, into more recent years and decades.</p> <p>25 Q. Do you have a most recent year in</p>

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Page 54	<p>1 mind, an example?</p> <p>2 A. I would say you could look at the fact</p> <p>3 that the Confederate flag was only removed from</p> <p>4 the capital grounds in 2015 as a result of a</p> <p>5 racial massacre. I would point to the COVID</p> <p>6 litigation, whereby the state was forced to sort</p> <p>7 of open up access to absentee voting. I would</p> <p>8 point to Civil Rights Division, Section 5</p> <p>9 objections from the 2010s up to Shelby County.</p> <p>10 Those would be some examples.</p> <p>11 Q. With regard to the COVID-19</p> <p>12 litigation, are you aware that the ruling in that</p> <p>13 case was that the laws in place by the district</p> <p>14 court, I mean, as applied were unconstitutional</p> <p>15 because of COVID-19?</p> <p>16 A. I'm not super, super familiar with the</p> <p>17 findings in terms of my memory on those cases, but</p> <p>18 I understand it was similar to the litigation in</p> <p>19 Alabama. I think it was the -- some of it got</p> <p>20 stayed, but I believe it was the witness</p> <p>21 requirement for notarization purposes that got</p> <p>22 overturned.</p> <p>23 Q. So you believe there was a notary</p> <p>24 requirement on the witness requirement in South</p> <p>25 Carolina?</p>	Page 56	<p>1 may be things orchestrated by local delegations,</p> <p>2 but they're still laws passed out of the General</p> <p>3 Assembly.</p> <p>4 Q. Do you have any knowledge of how that</p> <p>5 process works, of how folks vote on local</p> <p>6 legislation in South Carolina General Assembly?</p> <p>7 A. I understand it's like most State</p> <p>8 House legislators. There's a lot of deference to</p> <p>9 local delegations.</p> <p>10 MR. TRAYWICK: Let's take a quick</p> <p>11 break, if you don't mind.</p> <p>12 THE WITNESS: I was about to ask the</p> <p>13 same, so that works.</p> <p>14 MR. TRAYWICK: Let's go off the record,</p> <p>15 Madam Court Reporter.</p> <p>16 (A recess was taken.)</p> <p>17 MR. TRAYWICK: Let's go back on the</p> <p>18 record.</p> <p>19 BY MR. TRAYWICK:</p> <p>20 Q. Thank you, Dr. Bagley. We are back on</p> <p>21 the record now. And like I said before, please</p> <p>22 speak up if you want to take any other breaks. I</p> <p>23 anticipate our next break will probably be for</p> <p>24 lunch. Let's try to cover as much as we can until</p> <p>25 then. I don't anticipate having you here all day</p>
Page 55	<p>1 A. No, I don't mean to say notary. I</p> <p>2 mean the witness.</p> <p>3 Q. You mentioned earlier that litigation</p> <p>4 was stayed; is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. By the United States Supreme Court?</p> <p>7 A. Yes.</p> <p>8 Q. Do you recall what the reasoning for</p> <p>9 that was?</p> <p>10 A. I do not.</p> <p>11 Q. Are you aware that the Supreme Court</p> <p>12 has upheld numerous challenges to witness</p> <p>13 requirements outside the context of COVID-19?</p> <p>14 A. I am aware.</p> <p>15 Q. Regarding the DOJ objections, were all</p> <p>16 of those sort of smattering of objections at the</p> <p>17 local level?</p> <p>18 A. It depends on how you view that. The</p> <p>19 very last one, of course, as you know, is the</p> <p>20 photo ID situation, which we discussed in the last</p> <p>21 deposition. But even the local ones, I think what</p> <p>22 you have to realize is the Attorney General is</p> <p>23 objecting to laws that are passed by the General</p> <p>24 Assembly.</p> <p>25 So these may be local matters. These</p>	Page 57	<p>1 by any stretch of the imagination. I've just got</p> <p>2 to get through some of this stuff.</p> <p>3 A. Yes, sir. Sounds good.</p> <p>4 Q. Thank you for your patience.</p> <p>5 Regarding some of those DOJ</p> <p>6 objections, is it your position that all of them</p> <p>7 related to local laws that were passed by the</p> <p>8 General Assembly?</p> <p>9 A. All of them, meaning literally all of</p> <p>10 them?</p> <p>11 Q. The local -- the objections to local</p> <p>12 laws.</p> <p>13 A. No. Some of those were things that</p> <p>14 passed out of the General Assembly, but I wouldn't</p> <p>15 say every single one.</p> <p>16 Q. Speaking of pre-clearance -- we talked</p> <p>17 about this in your last deposition -- but you're</p> <p>18 aware that President Obama's Department of Justice</p> <p>19 pre-cleared the plan in 2011, correct?</p> <p>20 A. Correct.</p> <p>21 Q. You're aware that that plan also</p> <p>22 survived a Section 2 challenge and a racial</p> <p>23 gerrymandering challenge; is that correct?</p> <p>24 A. Yes, in the Backus case.</p> <p>25 Q. Are you suggesting that the fact that</p>

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Page 58	<p>1 a plaintiff files a challenge that is unsuccessful</p> <p>2 is still evidence or indicative of discriminatory</p> <p>3 intent of the plan at issue?</p> <p>4 A. Not in and of itself. I think you</p> <p>5 have to consider something like that within the</p> <p>6 bigger picture, you know, as we would never take</p> <p>7 any one single piece of evidence and, you know,</p> <p>8 take that out of context and rely upon that</p> <p>9 exclusively. But I think if you look at the fact</p> <p>10 that a challenge was brought then, after all these</p> <p>11 other challenges in previous decades, and then</p> <p>12 what people are saying now, I think it's</p> <p>13 significant.</p> <p>14 Also, too, if you look at what members</p> <p>15 of the public and the legislator are saying in</p> <p>16 these hearings and in these meetings, in their</p> <p>17 minds, the sort of legal landscape, if you will,</p> <p>18 regarding redistricting has changed since that</p> <p>19 time. And, you know, in their minds, there's some</p> <p>20 things that could be done differently.</p> <p>21 Q. Are you referring to the</p> <p>22 non-retrogression after Shelby County V. Holder?</p> <p>23 A. Yes, that would be one of the things</p> <p>24 that people mention that -- you know, for example</p> <p>25 it was no longer necessary to remain -- to</p>	Page 60	<p>1 history.</p> <p>2 Do you think this court has the</p> <p>3 ability to go behind the panel and the U.S.</p> <p>4 Supreme Court from Backus to determine whether the</p> <p>5 2011 plan was a racial gerrymander and counter --</p> <p>6 MR. INGRAM: Objection.</p> <p>7 THE WITNESS: I think that goes beyond</p> <p>8 the scope of what I've been asked to do. I've</p> <p>9 been asked to put before the court anything that I</p> <p>10 think is relative to a determination of</p> <p>11 discriminatory intent using the Arlington Heights</p> <p>12 framework. That's what I have done.</p> <p>13 To that extent, I discuss Backus. To</p> <p>14 that extent, I put forth before the court the</p> <p>15 things that people are saying that they think are</p> <p>16 relevant since that decision has been made, if</p> <p>17 that makes sense.</p> <p>18 It's certainly not for me to make a</p> <p>19 legal argument regarding where the law stands post</p> <p>20 Backus, post Shelby County, or whatever.</p> <p>21 BY MR. TRAYWICK:</p> <p>22 Q. Dr. Bagley, if we could turn back to</p> <p>23 Page 3 of your report. Can you explain what you</p> <p>24 mean by, quote, "Wider historical and</p> <p>25 contemporaneous contexts," end quote?</p>
Page 59	<p>1 maintain CD 6 as such. And then given that, you</p> <p>2 know, for example, they would -- in their minds,</p> <p>3 there would not be a need to, you know, begin by</p> <p>4 splitting black people off of North Charleston and</p> <p>5 putting them with concentrations of black voters</p> <p>6 in Columbia, just for example.</p> <p>7 Q. Regarding that legal argument, are you</p> <p>8 aware that plaintiffs in Backus, after Shelby</p> <p>9 County, sought to revise the lawsuit to make those</p> <p>10 arguments? Were you aware of that?</p> <p>11 A. That's Senator Harpootlian?</p> <p>12 Q. Yes, sir.</p> <p>13 A. I'm not as familiar with that</p> <p>14 particular filing.</p> <p>15 Q. So are you aware that they lost and</p> <p>16 that the Supreme Court still affirmed?</p> <p>17 A. If that's what you're presenting. I</p> <p>18 don't remember after -- you're talking about after</p> <p>19 the dispensation of Backus?</p> <p>20 Q. Yes. They tried to revive the</p> <p>21 challenge in light of Shelby County V. Holder.</p> <p>22 Were you aware of that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you think that this court -- I</p> <p>25 mean, we're in a court of law. I understand your</p>	Page 61	<p>1 A. This is in the first full paragraph</p> <p>2 under Roman II?</p> <p>3 Q. Yes, sir.</p> <p>4 A. That just means to place the sequence</p> <p>5 of events within the historical context. Again,</p> <p>6 that's the Arlington Heights framework to say is</p> <p>7 there -- what's the historical background,</p> <p>8 particularly if it reveals a series of official</p> <p>9 actions taken for immediate purposes. And then,</p> <p>10 of course, you discuss the sequence of events, and</p> <p>11 those are elemental to this framework.</p> <p>12 Q. Do you think the discrimination or</p> <p>13 discriminatory statements need to be probative of</p> <p>14 the decision at issue; that is, redistricting?</p> <p>15 A. Could you rephrase the question, I'm</p> <p>16 sorry?</p> <p>17 Q. Sure. The discrimination or past</p> <p>18 discrimination on which you relied, do you think</p> <p>19 it should be probative or related to</p> <p>20 redistricting, which is the decision that is under</p> <p>21 challenge right now?</p> <p>22 A. Not exclusively.</p> <p>23 Q. What other examples did you take into</p> <p>24 account?</p> <p>25 A. Historical discrimination?</p>

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Page 62	<p>1 Q. Just in general?</p> <p>2 A. I'm asking. Maybe ask the question</p> <p>3 again.</p> <p>4 Q. Sure. What other examples did you</p> <p>5 rely on, other than the redistricting context?</p> <p>6 A. Well, I tried to focus on voting</p> <p>7 rights specifically. For example, I didn't talk</p> <p>8 about segregation.</p> <p>9 Q. That's where a lot of the focus of</p> <p>10 your research has been in the past, right?</p> <p>11 A. Initially, yes.</p> <p>12 Q. Do you think that DOJ's past</p> <p>13 objections to local government laws can be</p> <p>14 attributed to the South Carolina General</p> <p>15 Assembly's redistricting decisions this cycle?</p> <p>16 A. I think that insofar as they're in my</p> <p>17 report, they're relevant to the bigger picture. I</p> <p>18 don't think everything has to have a direct line</p> <p>19 drawn to the General Assembly's passage of this</p> <p>20 redistricting plan. I think the Arlington Heights</p> <p>21 framework asks us to sort of present this broader</p> <p>22 mosaic, if you will, that will include that.</p> <p>23 Q. Can you explain upon what accepted and</p> <p>24 reliable methods you relied to sort of draw the</p> <p>25 line between those things?</p>	Page 64
Page 63	<p>1 A. I think the framework allows us to do</p> <p>2 it. I think, you know, we present -- as I have</p> <p>3 here -- the historical background, and you carry</p> <p>4 that forward to the present as you can, and then</p> <p>5 you discuss the specific sequence of events as it</p> <p>6 relates.</p> <p>7 Q. How did you know to use Arlington</p> <p>8 Heights?</p> <p>9 A. So when I started doing research on</p> <p>10 voting rights litigation, I read a lot of case</p> <p>11 law, and I became aware of the sort of general</p> <p>12 structure of a lot of these voting rights cases.</p> <p>13 This is when I -- the transition was sort of I'd</p> <p>14 done a lot of work in the archives of Judge Frank</p> <p>15 Johnson, a district court judge and appellate</p> <p>16 court judge from Alabama.</p> <p>17 I started researching the Library of</p> <p>18 Congress's voting rights cases. So that kind of</p> <p>19 began my journey in this.</p> <p>20 Then, as I think we touched upon in</p> <p>21 the last deposition, I believe I told you that I</p> <p>22 actually -- my very -- my first report that I</p> <p>23 wrote as an expert was an Arlington Heights</p> <p>24 framework report. It was never entered into the</p> <p>25 record. There was a settlement in that case.</p>	Page 65

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<p style="text-align: right;">Page 66</p> <p>1 secondary sources that I was familiar with. Those</p> <p>2 drew me to some different sources that I was not</p> <p>3 previously familiar with. I undertook what amount</p> <p>4 of primary source researches I could, and, of</p> <p>5 course, I reviewed the sequence of events, as</p> <p>6 available, in the public record.</p> <p>7 Q. Turn with me, if you don't mind, to</p> <p>8 Page 4 of your report.</p> <p>9 A. Okay.</p> <p>10 Q. Thank you. I just want to make sure</p> <p>11 we're on the same page. You said there right at</p> <p>12 the end of Section 2 that you, quote, "Decidedly</p> <p>13 resist reaching final conclusions, which is for</p> <p>14 the court to do," end quote.</p> <p>15 Did I read that correctly?</p> <p>16 A. Yes.</p> <p>17 Q. So you take no opinion at all on</p> <p>18 whether discriminatory intent motivated the South</p> <p>19 Carolina General Assembly in the passage of that</p> <p>20 plan?</p> <p>21 A. I can't reach that final conclusion.</p> <p>22 What I can say is that the evidence might tend to</p> <p>23 support that.</p> <p>24 Q. Are we just parsing words here?</p> <p>25 A. That's a lot of the law, isn't it?</p>	<p style="text-align: right;">Page 68</p> <p>1 A. I have not been a part of it or party</p> <p>2 to it myself, no.</p> <p>3 Q. Have you ever worked for a state</p> <p>4 legislature before?</p> <p>5 A. No.</p> <p>6 Q. Have you ever worked for any member of</p> <p>7 Congress or the United States Senate?</p> <p>8 A. I have only worked as an historian.</p> <p>9 Q. Have you ever been part of</p> <p>10 redistricting litigation before your testimony in</p> <p>11 the Alabama case this cycle?</p> <p>12 A. No. I was still in graduate school at</p> <p>13 the time of the 2010 redistricting cycle.</p> <p>14 Q. Do you agree you have no personal</p> <p>15 experience in the redistricting process?</p> <p>16 A. Personal, hands-on experience, no.</p> <p>17 That would be correct.</p> <p>18 Q. What is your understanding of how the</p> <p>19 process normally works?</p> <p>20 A. Well, I think there are elements of it</p> <p>21 that worked as they normally would, as they did in</p> <p>22 2010. For example, the hearings being held. But</p> <p>23 what I'm flagging in terms of departures is when</p> <p>24 legislators on the committee say, "I don't know</p> <p>25 where this map came from"; when legislators on the</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. I mean, what is your opinion? That's</p> <p>2 why I'm deposing you today, to find out what your</p> <p>3 opinions are.</p> <p>4 A. My opinion is that there is quite a</p> <p>5 bit of evidence here that the court could use to</p> <p>6 reach a finding of discriminatory intent.</p> <p>7 Q. You agree that it's the court's job to</p> <p>8 conduct the Arlington Heights analysis, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Can you please explain what you mean</p> <p>11 by "procedural irregularities"?</p> <p>12 A. So departures from normal practice,</p> <p>13 departures from, sort of, best practices and good</p> <p>14 government and so on. And in this case, in</p> <p>15 particular, things that members of these</p> <p>16 legislative committees have flagged themselves as</p> <p>17 irregularities.</p> <p>18 Q. Are you familiar generally with the</p> <p>19 legislative process in South Carolina, how a bill</p> <p>20 becomes a law?</p> <p>21 A. Generally, yes.</p> <p>22 Q. Have you ever been part of</p> <p>23 redistricting before?</p> <p>24 A. You mean before this cycle?</p> <p>25 Q. Yes.</p>	<p style="text-align: right;">Page 69</p> <p>1 committee say, "I don't understand why this was</p> <p>2 put out before the holiday and then we come back</p> <p>3 and now we have to vote on it." You know, when,</p> <p>4 for example, Representative King says, "I don't</p> <p>5 understand why I'm not chairing this meeting," and</p> <p>6 so forth.</p> <p>7 These are things to me that are being</p> <p>8 flagged by the legislators themselves as</p> <p>9 procedural departures.</p> <p>10 Q. Let's take those in order. Number</p> <p>11 one, don't know where the map came from. Staff</p> <p>12 drew all the maps here, right?</p> <p>13 A. That's my understanding.</p> <p>14 Q. So notwithstanding they don't know</p> <p>15 where the map came from, can you explain how</p> <p>16 that's a procedural departure?</p> <p>17 A. Let me rephrase. Representative</p> <p>18 Bernstein, for example, says I -- at one point, "I</p> <p>19 didn't know that we were even drafting a second</p> <p>20 map. I don't understand why we were drafting a</p> <p>21 second map. I had no idea that this was going</p> <p>22 on." And she's on the committee. Senator</p> <p>23 Matthews had similar comments at another point.</p> <p>24 So those are things that strike me as</p> <p>25 irregularities when you have members of a</p>

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<p style="text-align: right;">Page 70</p> <p>1 committee that are indicating that they have not 2 been at all a part of the process and in a 3 legislative committee meeting for having been 4 blindsided. 5 Q. Do you know whether they asked to be a 6 part of the process? 7 A. All I know is what they -- I mean, if 8 they had asked and then they're expressing dismay, 9 one presumes that they would have said, you know, 10 I had asked to X, Y, or Z. Again, it's -- if 11 they're expressing frustration that things are 12 being done without their input, then presumably 13 they wanted to have input. 14 Q. They were given input on it, weren't 15 they? 16 A. At what stage, is the question, 17 though. I mean, it's -- specific examples are 18 these two specific examples that they're saying 19 they didn't have anything to do with it. 20 Q. Is it your position that every single 21 member of the subcommittee must be in the map room 22 at all times for a map to be drafted? 23 A. No, but if we're talking about two 24 major maps, one being published and then without a 25 second one being literally published and then</p>	<p style="text-align: right;">Page 72</p> <p>1 the existence of a major, you know, piece to the 2 process before it went online? 3 Q. Do you know what the process behind 4 the scenes was or why? 5 A. No. I would love to know, but therein 6 is the issue. 7 Q. But because you don't know, can you 8 offer an opinion one way or the other as to 9 whether there was some nefarious motive or 10 departure from normal procedure by releasing it as 11 soon as it was available? 12 A. All I can do is convey what the 13 members of the committee are saying. That's what 14 I have done. 15 Q. She is a member of the minority party 16 that voted against this legislation, correct? 17 A. That's correct. 18 Q. Turning to your second alleged 19 departure from procedure, publishing things on 20 holidays. I'll go back, again, to my question 21 earlier: I mean, are you suggesting that staff 22 acted in bad faith on when they published maps or 23 scheduled meetings? 24 A. I am presenting to the court where 25 members of the committee have expressed their</p>
<p style="text-align: right;">Page 71</p> <p>1 members of the committee finding out about it at 2 the same time as the public, that strikes me as a 3 departure and irregularity. 4 Q. What's normal practice there then? Do 5 you know? 6 A. Well, according to Representative 7 Bernstein, it would be that she would be informed 8 before members of the public that staff were 9 producing a second map. 10 Q. Do you think it's a bad idea to have 11 options? 12 A. Meaning in terms of the second map? 13 Q. In general. 14 A. Do I think it's a bad idea to have 15 options? No. I think it's great to have options. 16 Q. So she had an opportunity to comment 17 on that second option; did she not? 18 A. After it was published. 19 Q. So what, in your view, is the problem? 20 A. In her view, the problem was that as a 21 member of the committee she was finding out about 22 it at the same time as the public. 23 I mean, if you are a member of a 24 committee that's responsible for something, 25 wouldn't you think that you would at least know of</p>	<p style="text-align: right;">Page 73</p> <p>1 dismay at that kind of scheduling. 2 Q. So members of the Democratic Party 3 were not pleased with the scheduling, and you 4 think that's a departure from legislative 5 procedure? Is that your opinion? 6 A. I think for it to happen multiple 7 times and for multiple people to complain about 8 it, and if they are actually on a bipartisan 9 committee that's supposed to be cooperating with 10 one another, yes, I think that deserved to be 11 discussed. 12 Q. Do you know whether there was any 13 coordination to -- between and amongst members of 14 the Democratic Party to repeatedly voice those 15 objections? 16 A. You cut out on me. To do what? 17 Q. Sorry. Do you know whether there was 18 any coordination between and amongst members of 19 the Democratic Party to voice those objections? 20 A. I'm not privy to any internal 21 discussions that they would have had. 22 Q. Turning to Mr. King, I mean, are you 23 saying that this entire process is tainted because 24 one member did not preside over one of the dozens 25 of meetings?</p>

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<p style="text-align: right;">Page 74</p> <p>1 A. Of course not. No. I just present</p> <p>2 that as one of a number of examples.</p> <p>3 Q. Dr. Bagley, do you have any opinions</p> <p>4 as to whether the map drawing process, this cycle,</p> <p>5 differed in any way procedurally from the previous</p> <p>6 cycles in South Carolina?</p> <p>7 A. Could you restate it, Mr. Traywick,</p> <p>8 I'm sorry?</p> <p>9 Q. Sure. I'll be glad to.</p> <p>10 Do you have any opinions as to whether</p> <p>11 the map drawing process this cycle differed in any</p> <p>12 material way from the previous cycles in South</p> <p>13 Carolina?</p> <p>14 A. I understand it was generally</p> <p>15 analogous. There were some differences in terms</p> <p>16 of, like, time of day meetings were held, maybe.</p> <p>17 The things that we're talking about here, like the</p> <p>18 example with Representative King.</p> <p>19 I'm, obviously, familiar with the</p> <p>20 dispensation of Backus. You know, general</p> <p>21 awareness of the hearings that were held in that</p> <p>22 cycle and the process. Obviously, not as</p> <p>23 intimately familiar with that cycle as this one.</p> <p>24 But I'm not asked to opine on that</p> <p>25 cycle anyway or regardless, just insofar as it's</p>	<p style="text-align: right;">Page 76</p> <p>1 Senator Rankin discussing the process in the House</p> <p>2 and suggesting they've got a guy in a room that</p> <p>3 nobody knows where it is is cooking things up.</p> <p>4 You know, when it's multiple voices in a chorus,</p> <p>5 then I think we can say this is significant.</p> <p>6 If it were just one single person</p> <p>7 saying at one point in time, "I think there's a</p> <p>8 lack of transparency," then that's not what you</p> <p>9 would base it on. That's, again, you know, just a</p> <p>10 common standard.</p> <p>11 Q. Dr. Bagley, did you take into account</p> <p>12 the fact that a lot of those voices of</p> <p>13 transparency concerns came from plaintiffs'</p> <p>14 counsel here?</p> <p>15 A. I understand that that was -- those</p> <p>16 were among the voices, yes.</p> <p>17 Q. Are you aware that they filed</p> <p>18 litigation against the legislative leader at that</p> <p>19 point?</p> <p>20 A. Yes, I'm aware that they were -- you</p> <p>21 know, a couple of times testified as part of that</p> <p>22 chorus at a couple of different hearings, if</p> <p>23 memory serves.</p> <p>24 Q. Are you aware of any coordination</p> <p>25 between and amongst folks who testified about the</p>
<p style="text-align: right;">Page 75</p> <p>1 part of the framework for the report.</p> <p>2 Q. Just for your edification, I'm trying</p> <p>3 to -- there's a lot of criticism in here about</p> <p>4 lack of transparency and things like that. So I'm</p> <p>5 trying to figure out the standard on which you</p> <p>6 relied to make that opinion.</p> <p>7 What do you think the proper process</p> <p>8 was, and upon what historical or reliable methods</p> <p>9 did you rely in formulating that standard?</p> <p>10 A. So I go back to our basic principle, I</p> <p>11 mean, going all the way back to gravitas (sic). I</p> <p>12 mean, you don't take any one source and, you know,</p> <p>13 base a conclusion or opinion on that single source</p> <p>14 out of context.</p> <p>15 So if I were to review this whole</p> <p>16 record and one single legislators or one single</p> <p>17 member of the public said, "I don't think you guys</p> <p>18 are being totally transparent here," you know, I'm</p> <p>19 not going to base an opinion on that. But when</p> <p>20 it's within the context that I've presented and</p> <p>21 then it's multiple people, multiple members of the</p> <p>22 public and multiple members of these legislative</p> <p>23 committees saying, "I don't think there's</p> <p>24 transparency, and I don't know what's being done</p> <p>25 in a, quote unquote, "back room," you know, even</p>	<p style="text-align: right;">Page 77</p> <p>1 lack of transparency?</p> <p>2 A. I'm not privy to any private</p> <p>3 conversations that they may have had.</p> <p>4 Q. Would that affect your analysis if</p> <p>5 there was, in fact, coordination?</p> <p>6 A. Sure.</p> <p>7 Q. Obviously, you said you weren't</p> <p>8 retained to analyze the last cycle's redistricting</p> <p>9 process, correct?</p> <p>10 A. No. Systematically, no. I discuss it</p> <p>11 in the report as part of this history of getting</p> <p>12 us up to the present.</p> <p>13 Q. So you don't have any opinions</p> <p>14 regarding whether this process was consistent with</p> <p>15 prior practice or whether it was abnormal?</p> <p>16 A. I understand that there is probably a</p> <p>17 general consistency, but what I'm being asked to</p> <p>18 do is review the record relevant to this cycle and</p> <p>19 identify, you know, what's asked for in the</p> <p>20 Arlington Heights framework.</p> <p>21 Q. Just so I'm clear -- I want to make</p> <p>22 sure. This is my only time or might be the only</p> <p>23 time to talk to you -- your three objections that</p> <p>24 I wrote down are that, you know, some members said</p> <p>25 on the record they didn't know where maps came</p>

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<p style="text-align: right;">Page 78</p> <p>1 from, some maps were dropped around the holidays, 2 and Representative King complained that he did not 3 preside over the Judiciary Committee meeting for 4 the House. 5 Are there any other examples that you 6 claim demonstrate procedural departure from the 7 normal procedure? 8 A. If there are, they're in the report. 9 I don't remember everything that I flagged as a 10 potential procedural departure in the report. So 11 I couldn't speak to that with 100 percent 12 certainty without flipping through that whole 13 "Sequence of Events" section. 14 Q. Is it your opinion that those three 15 examples render the process invalid under an 16 Arlington Heights factor? 17 A. No. I think they're simply among the 18 things that a court would consider. 19 Q. You agree that this process was 20 generally consistent with prior cycles, correct? 21 A. I think there are elements of it that 22 were. 23 Q. I have written down "generally 24 analogous" and "general consistency." Do you 25 disagree with those prior statements?</p>	<p style="text-align: right;">Page 80</p> <p>1 A. Yes. 2 Q. Is that how any legislation is 3 crafted? 4 A. Of course not. 5 Q. So legislators and their staff don't 6 type out in real time what the language of the 7 bill is going to be, right? Work needs to be done 8 ahead of time, and then it's introduced; is that 9 the normal process for legislation? 10 A. Generally speaking, but I would expect 11 at least that, you know, members of a very 12 important committee would be equally involved in 13 the primary work of that committee, which appears 14 not to have been the case here. 15 Q. How is that not the case? Weren't 16 they at every meeting that they decided to show up 17 for and for which they didn't have leave? 18 A. Yes, but none of the work was actually 19 done at the meetings. Like, none of it. It's all 20 done in the map room, and it's done by staff, in 21 consultation, evidently, with only members of 22 majority. 23 Q. Do you know whether members of the 24 minority asked to be present in those meetings? 25 A. Asked to be present at which?</p>
<p style="text-align: right;">Page 79</p> <p>1 A. I would say, in terms of hearings -- 2 the public hearings being held, members of the 3 public coming forward and saying, "There's been 4 packing and cracking of black voters," members of 5 the legislator saying the same, people expressing, 6 you know, transparency concerns and that kind of 7 thing, yes. 8 Q. Can you concede that everyone had an 9 opportunity to be heard in this redistricting 10 cycle? 11 A. I think there was wide opportunity for 12 the submission of input or feedback, yes. 13 Q. Thank you. 14 Do you concede it would be unworkable 15 to draft a map live with all 306 legislators in 16 the room? 17 A. Sure. Yes. 18 Q. Do you concede it would have been even 19 more unworkable to draw a map live with all 124 20 House members in the room? 21 A. Absolutely. 22 Q. Do you concede it would have been 23 unworkable for map drawer to draw a map live in 24 front of members of the public with conflicting 25 views?</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. At any time where maps were being 2 drawn? 3 A. According to what they had to say at 4 the meetings that I saw, they -- you know, if 5 you're expressing dismay that you didn't have any 6 input or any involvement and, presumably, you 7 would have wanted to have had that input or 8 involvement prior to. 9 Q. Do you know whether members of the 10 majority were all present at the time the maps 11 were drawn? 12 A. Well, I know that none of them 13 complained after the fact about having a lack of 14 input. 15 Q. Someone has to draw it, right? 16 A. Sure. 17 Q. So you think that seven people from 18 all different competing perspectives ought to be 19 in there with the map drawer and staff to draw in 20 real time? 21 A. I would think that the staff 22 cartographer or the chairman of the committee 23 would at least seek input from the members of the 24 committee before a map is published to the public. 25 Q. The maps that were published to the</p>

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<p style="text-align: right;">Page 82</p> <p>1 public were, quote, "A starting point," were they 2 not? Isn't that in your report? 3 A. That is how they were characterized, 4 yes. 5 Q. Do you have any reason to dispute that 6 characterization? 7 A. No. But I know it was pointed out by 8 members of the committee that given that fact, if 9 the first House map was a starting point, they 10 questioned then what was the point for having a 11 second House map? Why not simply have a 12 discussion and amend the existing map? 13 "If it's a starting point," they said, 14 "what is the purpose of going back and drawing an 15 entirely different map," which everyone agreed was 16 essentially a facsimile of the Senate map, which 17 was widely panned by members of the public. 18 Q. Didn't the Senate also consider a 19 second entirely different map that Harpootlian had 20 drawn? 21 A. They did. 22 Q. So is it a problem to have options? 23 A. No. 24 Q. Dr. Bagley, do you know whether the 25 South Carolina General Assembly in any prior</p>	<p style="text-align: right;">Page 84</p> <p>1 upon myriad sources, and widened that, as 2 possible, in terms of sources. 3 And then, of course, one of the things 4 that historiography means is simply history that's 5 been written by historians. And so, obviously, 6 there's a lot of that in the first half of that 7 report where I talk about the historical 8 background. We rely on historical monographs, 9 publications that have been peer reviewed and so 10 on for their veracity and their value. 11 Q. That would have been on your 12 "Historical Background" section only? 13 A. Not necessarily, no, because the 14 sequence of events, even though I'm relying upon 15 these transcripts, videos, public hearings, that's 16 within the context of everything else that I have 17 put forth prior to. 18 Q. You put in the report in different 19 parts, though, right? Don't you agree that 20 Pages 25 through 49 are different than the 21 "Historical Background" section? 22 A. Sure. Yes. 23 Q. In fact, they're different factors 24 under the Arlington Heights analysis, aren't they? 25 A. That's correct.</p>
<p style="text-align: right;">Page 83</p> <p>1 redistricting cycle has ever provided specific 2 notes and feedback on every single map submitted 3 by the public? 4 A. Could you restate? It's a long 5 question, sorry. 6 Q. Sure. Do you know whether the General 7 Assembly in any prior redistricting cycle has ever 8 provided specific notes and feedback on publicly 9 submitted maps? 10 A. I don't think that they would provide 11 detailed, lengthy feedback on every single 12 publicly submitted map, no. 13 Q. Do you think that's required? 14 A. Not necessarily. 15 Q. Because you know being a member of the 16 General Assembly is a part-time job, right? 17 A. Sure. Yeah. 18 Q. Dr. Bagley, on Page 5 of your 19 report -- I'm sorry, Page 4. Sorry about that. 20 Can you please explain the, quote, 21 "common standards of historiography," end quote, 22 on which you relied to formulate your opinions in 23 this case? 24 A. Well, in part, that's what I was 25 talking about a moment ago in terms of reliance</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. Is it your contention that the same 2 standards apply to your recitation of the history 3 as to your review of the current legislative 4 record? 5 A. Yes. But I would say we're looking 6 at -- it's not just any one public hearing. It's 7 not just any one meeting of any one subcommittee 8 or committee. It's just as you enumerated 9 earlier, this wide swath of hearings and meetings 10 and, again, a chorus of voices of members of the 11 public and members of these legislative committees 12 within the historical context that I have 13 provided. 14 Q. Sure. Within that sort of wide range 15 of hearings, is it your contention that the 16 process is generally consistent with prior cycles? 17 Did I hear that correctly, or generally analogous? 18 A. In terms of holding public hearings 19 across the state to receive input and then members 20 of the public expressing that they thought not a 21 lot of input had actually been acted upon. 22 Q. Aside from that, how about legislative 23 procedures? Are you familiar with legislative 24 procedure in South Carolina or not? 25 A. Generally speaking, yes.</p>

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Page 86	<p>1 Q. Any departures there?</p> <p>2 A. Not in terms of, you know, a bill</p> <p>3 being introduced in one House or the other and</p> <p>4 eventually passing out of that entire body.</p> <p>5 Q. So in looking at that factor, would</p> <p>6 you agree that the court has to look at the</p> <p>7 totality of the circumstances?</p> <p>8 A. Yes.</p> <p>9 Q. I don't want to get into the history;</p> <p>10 let me make clear on the front end, Dr. Bagley.</p> <p>11 I'm certainly not here disputing South Carolina's</p> <p>12 troubled history as relating to race, particularly</p> <p>13 relating to the Civil War and these others eras.</p> <p>14 In looking at this section, it's a</p> <p>15 little light on sources. I want to know where you</p> <p>16 obtained information. Entire paragraphs cite one</p> <p>17 footnote. Is every sentence in those paragraphs</p> <p>18 related to the sources?</p> <p>19 A. Yes. So a pretty common practice for</p> <p>20 me is not to litter a paragraph with footnotes.</p> <p>21 So the first paragraph in a section is</p> <p>22 introductory, apart from the quotation from</p> <p>23 Colleton.</p> <p>24 The second paragraph goes to</p> <p>25 Footnote 3. It looks like there are two</p>	Page 88	<p>1 it's still relevant, and I think it's</p> <p>2 indispensable, in fact.</p> <p>3 Q. There on Page 6, in the second full</p> <p>4 paragraph, at the end of it you state that, "The</p> <p>5 1895 constitution," quote, 'remains the state's</p> <p>6 operative constitution to this date,'" end quote.</p> <p>7 From where did you obtain that</p> <p>8 information?</p> <p>9 A. Well, I understand that it's been</p> <p>10 amended a number of times. I know the West</p> <p>11 Committee has undertaken a systemic revision of it</p> <p>12 and so on.</p> <p>13 Q. Have you ever studied the West</p> <p>14 Committee?</p> <p>15 A. Not closely.</p> <p>16 Q. Would you agree that the 1895</p> <p>17 constitution has been amended hundreds of times</p> <p>18 since it was ratified initially?</p> <p>19 A. I would. And I'm sure black South</p> <p>20 Carolinians are very grateful for that.</p> <p>21 Q. Sure. And do you know who was on the</p> <p>22 West Committee?</p> <p>23 A. Not off the top of my head.</p> <p>24 Q. Have you ever read the West Committee</p> <p>25 report? I know it's a long one.</p>
Page 87	<p>1 historical monographs cited there that would cover</p> <p>2 the information in that paragraph.</p> <p>3 Q. So that's not common practice in</p> <p>4 historical text, to source your materials with</p> <p>5 footnotes after each sentence?</p> <p>6 A. After each sentence, no.</p> <p>7 Q. So is that just the --</p> <p>8 A. If I were quoting directly,</p> <p>9 absolutely. But no, if you're talking about</p> <p>10 summarizing a period of history, and then to cite</p> <p>11 two authorities on that would be common practice</p> <p>12 at the end of the paragraph.</p> <p>13 Q. Let's look at Page 5, the first</p> <p>14 paragraph under "Reconstruction." Each of those</p> <p>15 sentences contains quotes, correct?</p> <p>16 A. Yes. Those are from -- that's all</p> <p>17 from Foner, and the pages that are cited, 199 and</p> <p>18 200.</p> <p>19 Q. If you would turn with me, please, to</p> <p>20 Page 6 of your report. First of all, with regard</p> <p>21 to the pre-Civil War and reconstruction and</p> <p>22 redemption, I mean, certainly you're not trying to</p> <p>23 draw a straight line from those periods to the</p> <p>24 present, right?</p> <p>25 A. No, not a straight line. But I think</p>	Page 89	<p>1 A. Not entirely, no.</p> <p>2 Q. Is it really accurate to say that the</p> <p>3 1895 constitution remains the operative</p> <p>4 constitution to this day? A little more nuanced</p> <p>5 than that, right?</p> <p>6 A. I mean, I suppose it's -- it's</p> <p>7 still -- it has been amended numerous times, as</p> <p>8 you just said. I don't -- obviously, I don't mean</p> <p>9 to suggest there that it exists in the form that</p> <p>10 it existed during the redemption period. I think</p> <p>11 everyone would understand that.</p> <p>12 Q. Thank you for clarifying that. It was</p> <p>13 a little unclear for me from the report.</p> <p>14 THE WITNESS: Mr. Traywick, do you</p> <p>15 think it's a useful time to take a lunch break, or</p> <p>16 do we need to maybe plow through another half</p> <p>17 hour?</p> <p>18 MR. TRAYWICK: Let's go off the record</p> <p>19 real quick.</p> <p>20 (A recess was taken.)</p> <p>21 MR. TRAYWICK: Back on the record. And</p> <p>22 just let me know whenever it comes time for lunch,</p> <p>23 and we'll take a longer break at that time.</p> <p>24 THE WITNESS: Thanks.</p> <p>25 MR. TRAYWICK: I'm going to try to</p>

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Page 90	<p>1 speak up. I'm not screaming at you, but I hear</p> <p>2 I'm having audio issues on the court reporter's</p> <p>3 end, so I'm trying to address it.</p> <p>4 THE WITNESS: Got it.</p> <p>5 BY MR. TRAYWICK:</p> <p>6 Q. On Page 10 of your report, you discuss</p> <p>7 various voting practices that have come under</p> <p>8 fire, such as "at-large elections" and</p> <p>9 "single-shot voting."</p> <p>10 You do you think that all at-large</p> <p>11 elections negatively affect minority voters?</p> <p>12 A. I think historically they have been</p> <p>13 used, along with other devices, like majority vote</p> <p>14 requirements and number placed requirements, which</p> <p>15 taken all together typically would be seen as sort</p> <p>16 of quintessential vote dilution scheme.</p> <p>17 Q. Would you agree that it depends on the</p> <p>18 locality at issue, though, and the composition of</p> <p>19 that locality?</p> <p>20 A. Sure. Yes.</p> <p>21 Q. If you would, Dr. Bagley, what South</p> <p>22 Carolina-specific sources did you rely on to</p> <p>23 sketch your historic background and for your</p> <p>24 opinions in this case, aside from the case law?</p> <p>25 A. This was reflected in the footnotes,</p>	Page 92	<p>1 conducting your primary research for this case?</p> <p>2 A. Most of them. There might be one or</p> <p>3 two that I read for the first time as part of my</p> <p>4 work on this case.</p> <p>5 Q. Do you recall what you might have read</p> <p>6 for the first time for this case?</p> <p>7 A. Not off the top of my head. I mean, I</p> <p>8 would have to flip through again.</p> <p>9 Q. As for the others, do you recall when</p> <p>10 you would have read those and for what purpose?</p> <p>11 A. It would vary. I mean, some of them</p> <p>12 might be from graduate school. Some of them from</p> <p>13 my research in terms of voting rights when I</p> <p>14 started to work on the second project after the</p> <p>15 book was -- first book was published. So, I mean,</p> <p>16 it varies probably widely.</p> <p>17 Q. Do you recall, Dr. Bagley, from where</p> <p>18 you obtained your information about prior</p> <p>19 redistricting cases?</p> <p>20 A. So that, you know, is pretty easy. If</p> <p>21 you read the Backus case, the opinion, they're</p> <p>22 going to talk about the Colleton case. If you</p> <p>23 read the Colleton case, they're going to talk</p> <p>24 about Burton. If you read Burton, they're going</p> <p>25 to talk about the '80s cycle, and they're going to</p>
Page 91	<p>1 so ...</p> <p>2 Q. I see a lot, for example, about the</p> <p>3 New South and things of that nature. But do you</p> <p>4 recall any South Carolina-specific sources?</p> <p>5 A. I see Dr. Lau here, Democracy Rising:</p> <p>6 South Carolina and the Fight for Black Equality.</p> <p>7 Reference to Encyclopedia of South Carolina. BOT,</p> <p>8 who is cited by Professor Woodard in his report in</p> <p>9 the House case. What else?</p> <p>10 There's a chapter dedicated to South</p> <p>11 Carolina in The Quiet Revolution book. Obviously,</p> <p>12 there is Judge Gergel's book cited.</p> <p>13 Q. Did you read that book?</p> <p>14 A. Yes. Clive Webb, there's a chapter on</p> <p>15 South Carolina in that book, if memory serves.</p> <p>16 Q. Dr. Bagley, do you recall whether you</p> <p>17 relied on any sources written by Cole Blease</p> <p>18 Graham, Walter Edgar, or Professor Underwood?</p> <p>19 A. I don't believe I did.</p> <p>20 Q. With regard to the South</p> <p>21 Carolina-specific sources that you mentioned, did</p> <p>22 you read those for the first time in connection</p> <p>23 with your work on this case?</p> <p>24 A. No.</p> <p>25 Q. Which ones had you read before</p>	Page 93	<p>1 talk about Twiggs. And Twiggs are going to talk</p> <p>2 about O'Shields.</p> <p>3 So it's easy to kind of weave your way</p> <p>4 back through. Two, there's secondary sources that</p> <p>5 discuss that history as well, such as Professor</p> <p>6 Burton's, Professor Rupe's work and so on.</p> <p>7 Q. Did you draft all of these sections by</p> <p>8 yourself, or did you receive any assistance?</p> <p>9 A. No. This work is all mine.</p> <p>10 Q. The entire report?</p> <p>11 A. Correct.</p> <p>12 Q. Speaking of Backus, I recall from your</p> <p>13 last deposition you had about a sentence dedicated</p> <p>14 to it, but you beefed it up this time. Is there</p> <p>15 any reason for that?</p> <p>16 A. I had more time, you know, to get back</p> <p>17 into that. I had a little bit more time to go</p> <p>18 back and read that and speak a little more</p> <p>19 thoroughly about it.</p> <p>20 Q. On Page 18, you mention that the plan</p> <p>21 at issue in Backus was pre-cleared by Obama</p> <p>22 Justice Department under the standard of</p> <p>23 non-retrogression; is that correct?</p> <p>24 A. Yes.</p> <p>25 Q. But it also cleared the Federal Court</p>

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Page 94	<p>1 on other constitutional grounds and under</p> <p>2 Section 2 as well, correct?</p> <p>3 A. Correct.</p> <p>4 Q. On Page 19, you quote the Backus court</p> <p>5 as saying, "Defendants were able to disprove that</p> <p>6 race was the predominant factor by demonstrating</p> <p>7 that their decisions adhered to traditional</p> <p>8 race-neutral principles."</p> <p>9 Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. I think I mentioned earlier, were you</p> <p>12 aware that plaintiffs tried to revive that</p> <p>13 challenge after the U.S. Supreme Court decided --</p> <p>14 A. Shelby County, yes.</p> <p>15 Q. They lost again, right?</p> <p>16 A. That's right.</p> <p>17 Q. How does that affect your analysis</p> <p>18 about the applicability of non-retrogression to</p> <p>19 this plan as discussed in your report?</p> <p>20 A. Could you ask the question again or</p> <p>21 rephrase?</p> <p>22 Q. Sure, I'll be glad to. It might not</p> <p>23 have been a good one.</p> <p>24 The subsequent denial of that claim</p> <p>25 from the Backus plaintiffs, did you take that into</p>	Page 96	<p>1 Q. On Page 22, Dr. Bagley, if you</p> <p>2 wouldn't mind turning there with me. Now we're in</p> <p>3 sort of the DOJ objections under Section 5. I</p> <p>4 think earlier in your report you mentioned that</p> <p>5 DOJ had objected 122 times by 2012; is that right?</p> <p>6 A. That sounds right.</p> <p>7 Q. Do you know -- you then discuss the</p> <p>8 local objections, but I'm missing a lot of dates.</p> <p>9 Do you know the date ranges in which these</p> <p>10 occurred and when the most recent ones were?</p> <p>11 A. I think between 2000 or late '90s and</p> <p>12 2011 or just before Shelby County, there's like a</p> <p>13 dozen or so. A lot of them are from the 1980s and</p> <p>14 early '90s. You know, obviously, would have begun</p> <p>15 in 1970s.</p> <p>16 Q. That would have been following passage</p> <p>17 of the Voting Rights Act of 1965?</p> <p>18 A. Right.</p> <p>19 Q. In fact, your report says that many of</p> <p>20 these objections came between the passage of the</p> <p>21 VRA and its renewal in the 1980s; is that right?</p> <p>22 A. Correct.</p> <p>23 Q. Can you explain for me the relevance</p> <p>24 of those objections from 40 to some of them</p> <p>25 70 years ago, how those relate to the General</p>
Page 95	<p>1 account in discussing the applicability of</p> <p>2 non-retrogression for purposes of this</p> <p>3 redistricting cycle?</p> <p>4 A. No. I just know that there are a</p> <p>5 number of people, and not just Senator</p> <p>6 Harpootlian, who were -- who have made the case in</p> <p>7 public hearings or in these meetings that it was</p> <p>8 their opinion that you could -- you know, at --</p> <p>9 some people said, "start from scratch in drawing</p> <p>10 the districts."</p> <p>11 This is suggested by, you know, a</p> <p>12 number of people in the public hearings and in</p> <p>13 terms of their input. Again, not just Senator</p> <p>14 Harpootlian, who, as you said, obviously, lost</p> <p>15 that case.</p> <p>16 Q. Would you agree, in a typical case</p> <p>17 plaintiffs bear the burden of proof?</p> <p>18 A. Yes.</p> <p>19 Q. In your report you quoted the court as</p> <p>20 saying, "Defendants were able to disprove that</p> <p>21 race was a predominant factor"; is that right?</p> <p>22 A. That was the determination of the</p> <p>23 court in that case, yes.</p> <p>24 Q. So that's binding, correct?</p> <p>25 A. Right.</p>	Page 97	<p>1 Assembly's redistricting decisions in this case?</p> <p>2 A. Well, the framework asks us to look at</p> <p>3 the history of discrimination, and it asks us to</p> <p>4 present to the court this big picture, this broad</p> <p>5 mosaic.</p> <p>6 If you're discussing the history of</p> <p>7 voting rights in South Carolina, I mean, to me</p> <p>8 it's highly relevant that there were these number</p> <p>9 of objections. You know, that it -- it wasn't</p> <p>10 that long ago. I mean, a lot of the players, for</p> <p>11 example, in the 1980s are among some of the same</p> <p>12 now.</p> <p>13 Even regardless of that, even, as you</p> <p>14 say, that's 40 years ago, we're asked to look at</p> <p>15 the history and to present that as part of these</p> <p>16 reports. So this is simply a part of that.</p> <p>17 Q. Right. But you know the history has</p> <p>18 got to be probative of the decision at issue,</p> <p>19 right? So I'm trying to ascertain what you think</p> <p>20 the link is there. Where is the hook?</p> <p>21 A. Well, I mean, I'm not being asked to</p> <p>22 draw a direct line between one Section 5 objection</p> <p>23 from 1981 and the plan at issue here. Again, this</p> <p>24 is just part of a broader picture. It's part of</p> <p>25 what would be relevant to a court's determination.</p>

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<p style="text-align: right;">Page 98</p> <p>1 Q. Because one couldn't draw a straight 2 line, right?</p> <p>3 A. That's not what we're being asked to 4 do.</p> <p>5 Q. Well, you agreed with me that the 6 discrimination has to be probative of the 7 decision. So I'm trying to ask you to explain the 8 relevance there, and I'm asking whether you think 9 you can draw a straight line?</p> <p>10 A. I mean, we're talking about Civil 11 Rights Division objections. And I'm writing a 12 report where I'm asked to present a history of 13 discrimination. And if we have this litany of 14 examples of the General Assembly passing laws that 15 the Attorney General and Civil Rights Division 16 objects to, I think that's relevant to this 17 report, when one of the Arlington Heights factors 18 says look at the history.</p> <p>19 Q. Let's drill that down a little bit. 20 As I read this section of your report, you say 21 Beaufort County was blocked from doing so. You 22 say the City of Charleston was blocked from doing 23 so; the Town of Hollywood; City Gaffney; Kershaw 24 County. These are all local governments, correct?</p> <p>25 A. Yes. But like we were talking about</p>	<p style="text-align: right;">Page 100</p> <p>1 standard, and that's why this litigation was 2 necessary. That's my recollection.</p> <p>3 Q. That was a concurrence, right?</p> <p>4 A. Yes.</p> <p>5 Q. So that was not a majority opinion, 6 right?</p> <p>7 A. No. Although, I think Judge Kavanaugh 8 also made note of the fact that the law had been 9 amended, allowing it to get the, sort of, seal of 10 approval.</p> <p>11 Q. Sure, just a couple things moved. But 12 with respect to the Section 5 review concurrence 13 you just mentioned, two years later that was 14 gutted, correct?</p> <p>15 A. Meaning Section 5?</p> <p>16 Q. Right.</p> <p>17 A. Right.</p> <p>18 Q. So the United States Supreme Court, 19 they got the last word, right?</p> <p>20 A. Sure.</p> <p>21 Q. They disagreed with the concurring 22 opinion you reference, correct?</p> <p>23 A. Shelby County gutted Section 5, as you 24 say, yes.</p> <p>25 Q. Were you aware of any evidence that</p>
<p style="text-align: right;">Page 99</p> <p>1 earlier, a lot of that, you know, passes through 2 the General Assembly.</p> <p>3 Q. With the local delegation, right? I 4 mean, let's -- didn't you agree that that's the 5 way things go?</p> <p>6 A. I understand it's common practice for 7 deference to local delegations, sure.</p> <p>8 Q. When is the most current local 9 objection you reference?</p> <p>10 A. The most recent would have been 11 shortly before Shelby County. The very last one 12 was the photo ID law in 2011. So probably 2010, 13 if memory serves.</p> <p>14 Q. That was upheld in part, correct?</p> <p>15 A. The photo ID, yes, after it was 16 modified.</p> <p>17 Q. Yes, sure, just to take away a certain 18 element of proof if somebody for some strange 19 reason didn't have an ID, right?</p> <p>20 A. If I remember correctly, the court 21 said -- or there was a concurring opinion that 22 said this is telling, this is why we need 23 Section 5, because if there hadn't been this 24 challenge to this, they would not have gone back 25 and modified to have the reasonable impediment</p>	<p style="text-align: right;">Page 101</p> <p>1 people don't actually have any form of 2 government-issued identification in South 3 Carolina?</p> <p>4 A. No. And I'm not here trying to 5 relitigate the photo ID case. I just mention it 6 because it happened to be the very last section, 7 the example of an objection. And you had asked 8 what was, you know, the date of that last 9 objection. I think it was, like I said, 2011.</p> <p>10 Q. On Page 23, you discuss long wait 11 times for voting. I notice that you eliminated 12 reference to Richland County here; that was 13 mentioned in your previous report to the House 14 plan litigation. Is there any reason for that?</p> <p>15 A. No. I think in the last deposition 16 you had pointed out, hey, isn't this handled at 17 the local level, and is that majority black 18 district. I don't recall having taken it out for 19 that reason.</p> <p>20 I would acknowledge, of course, that 21 that's local, but it's still relevant to me. 22 Again, if we're looking at this broad mosaic of 23 access to the franchise and South Carolina 24 historically and contemporaneously, if there's 25 something that disproportionately affects black</p>

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<p style="text-align: right;">Page 102</p> <p>1 voters, then I think it's relevant to the report.</p> <p>2 It's not something that I have spent a</p> <p>3 whole lot of time on. It's just something that</p> <p>4 was relevant. That's why I mention it.</p> <p>5 Q. Dr. Bagley, if you could, would you</p> <p>6 explain sort of generally what you believe the</p> <p>7 relevance is of Pages 24 to 49 of your report?</p> <p>8 Now we're kind of moving into the next section.</p> <p>9 A. That's the sequence of events as</p> <p>10 described in the Arlington Heights framework, and</p> <p>11 that would be the legislative sequence of events</p> <p>12 in terms of the hearings that were held and the</p> <p>13 meetings of the redistricting subcommittee and the</p> <p>14 House Ad Hoc Committee.</p> <p>15 Q. Do you agree that a layperson could go</p> <p>16 watch all of these videos and write down what</p> <p>17 happened?</p> <p>18 A. I agree that a layperson could watch</p> <p>19 these videos and give their interpretation of what</p> <p>20 was happening. What I have done is provided what</p> <p>21 I think is most relevant, as a historian familiar</p> <p>22 with the history of South Carolina and familiar</p> <p>23 with, you know, the history of the struggle for</p> <p>24 voting rights.</p> <p>25 Q. So you did make some selections here</p>	<p style="text-align: right;">Page 104</p> <p>1 A. It might.</p> <p>2 Q. Do you, sitting here today, have any</p> <p>3 criticisms as to the composition of the</p> <p>4 redistricting subcommittee for the South Carolina</p> <p>5 Senate?</p> <p>6 A. No.</p> <p>7 Q. In fact, they were all lawyers,</p> <p>8 weren't they?</p> <p>9 A. Yes. Yes, they were.</p> <p>10 Q. Also on Page 25, do you agree that</p> <p>11 this cycle at the beginning, the committee was</p> <p>12 faced with Congressional District 6 being roughly</p> <p>13 12 percent underpopulated and Congressional</p> <p>14 District 1 being roughly 12 percent overpopulated,</p> <p>15 correct?</p> <p>16 A. That's correct.</p> <p>17 Q. You would agree that those two</p> <p>18 districts are contiguous and adjacent to one</p> <p>19 another, correct?</p> <p>20 A. That's right.</p> <p>21 Q. Before we go into this --</p> <p>22 MR. TRAYWICK: Off the record real</p> <p>23 quick.</p> <p>24 (A lunch recess was taken.)</p> <p>25 MR. TRAYWICK: Back on the record.</p>
<p style="text-align: right;">Page 103</p> <p>1 in what you included; is that right?</p> <p>2 A. I mean, obviously, you can't just</p> <p>3 reproduce the transcripts, so yes.</p> <p>4 Q. Right. But made your points. You</p> <p>5 made calls individually on what to include, right?</p> <p>6 A. Yes.</p> <p>7 Q. On Page 25, I'm -- you say that:</p> <p>8 "Senators Sabb and Matthews were the only black</p> <p>9 legislators names in a seven-member committee."</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. What do you mean by "only"? Do you</p> <p>13 have a criticism as to the composition of the</p> <p>14 committee?</p> <p>15 A. It's just a statement of fact.</p> <p>16 Q. Well, I mean, I would suggest to you</p> <p>17 that a lot of statements of fact are written like</p> <p>18 that, right, so they seem like criticism. So</p> <p>19 that's why I'm asking you: Do you have a</p> <p>20 criticism of the composition of the committee?</p> <p>21 A. It's not for me to personally</p> <p>22 criticize anything. I'm simply laying forth the</p> <p>23 facts as relevant.</p> <p>24 Q. But "only" suggests a persuasive tone;</p> <p>25 does it not?</p>	<p style="text-align: right;">Page 105</p> <p>1 BY MR. TRAYWICK:</p> <p>2 Q. Dr. Bagley, before we got off, I</p> <p>3 believe you indicated that you were asked to find</p> <p>4 a history of discrimination?</p> <p>5 A. I was asked to examine the process of</p> <p>6 the passage of a bill that became the plan and to</p> <p>7 determine if there was any evidence that would</p> <p>8 influence the court in making a determination one</p> <p>9 way or the other on discriminatory intent.</p> <p>10 Q. But all you are willing to say is an</p> <p>11 inference, not whether there is such intent?</p> <p>12 A. Right.</p> <p>13 Q. I now want to run through, sort of,</p> <p>14 the last half of your report. Again, we talked</p> <p>15 about this earlier. I pointed to a few words.</p> <p>16 You said you're just reporting the facts, but</p> <p>17 surely you're not -- you would acknowledge that</p> <p>18 it's in a persuasive way, right?</p> <p>19 A. I think that would be fair to say.</p> <p>20 Q. You agreed earlier that you made</p> <p>21 judgment calls on what you felt was relevant,</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. This is your interpretation of</p> <p>25 legislative history, correct?</p>

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<p style="text-align: right;">Page 106</p> <p>1 A. I think that's fair.</p> <p>2 Q. Page 27, would you mind flipping with</p> <p>3 me there, please?</p> <p>4 A. All right.</p> <p>5 Q. Can you please explain what, quote,</p> <p>6 "serious transparency concerns" you contend were</p> <p>7 revealed at the September 17, 2021, meeting?</p> <p>8 A. There were a number of people -- or</p> <p>9 let me see. Let me just flip through and make</p> <p>10 sure I'm with you. You said Page 27?</p> <p>11 Q. Yes, sir. It's the third line from</p> <p>12 the bottom of the first full paragraph.</p> <p>13 A. I see.</p> <p>14 (The witness reviews the document, as</p> <p>15 requested.)</p> <p>16 THE WITNESS: So this was -- Senator</p> <p>17 Harpootlian, Senator Matthews are among those who</p> <p>18 had argued at times that the process was not</p> <p>19 entirely transparent.</p> <p>20 BY MR. TRAYWICK:</p> <p>21 Q. We already went through that earlier,</p> <p>22 the specific concerns, right?</p> <p>23 A. Some of them, yes, I think we did.</p> <p>24 Q. Are there any others that we didn't</p> <p>25 cover?</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. I apologize, I jumped ahead a little</p> <p>2 bit. Would you flip back with me to Page 25, that</p> <p>3 first Senate Redistricting Subcommittee meeting?</p> <p>4 A. Yes.</p> <p>5 Q. Do you have any opinions about that</p> <p>6 subcommittee meeting as it related to process</p> <p>7 transparency or any other opinions you intend to</p> <p>8 offer in this case?</p> <p>9 A. Any opinions I have about that meeting</p> <p>10 would be in this section.</p> <p>11 Q. Can you point me to what those</p> <p>12 opinions are?</p> <p>13 A. This is just a narrative of what the</p> <p>14 committee did, who was on it, who staff were and</p> <p>15 that sort of thing, what was the press release.</p> <p>16 If you're describing a sequence of</p> <p>17 events, obviously, you want to establish when the</p> <p>18 committee first met and who was on it.</p> <p>19 Q. Again, this is from your perspective,</p> <p>20 correct?</p> <p>21 A. Well, yes. But, I mean, this is</p> <p>22 pretty straightforward.</p> <p>23 Q. I know we discussed it earlier. But,</p> <p>24 I mean, you include things like staff played a,</p> <p>25 quote, "fundamental, though often obscured, role</p>
<p style="text-align: right;">Page 107</p> <p>1 A. I know it was repeated by not just</p> <p>2 Senators Harpootlian and Matthews and not just at</p> <p>3 this meeting. There were other meetings where,</p> <p>4 you know, for example Senator Harpootlian</p> <p>5 expressed his concerns. There were members of the</p> <p>6 public that expressed their belief that the</p> <p>7 process was not entirely transparent.</p> <p>8 Q. But you said, "serious transparency</p> <p>9 concerns," so that indicates a heightened level.</p> <p>10 What serious transparency concerns are</p> <p>11 you referencing here?</p> <p>12 A. Well, Senator Harpootlian at one point</p> <p>13 refers to it as a "kabuki theater." I think at</p> <p>14 one point he suggested things were being done,</p> <p>15 quote, "in a back room." I think it was said that</p> <p>16 they weren't going to allow the public to, quote,</p> <p>17 "look under the hood and see what was going on,"</p> <p>18 and so on.</p> <p>19 Q. Do you recall whether in any prior</p> <p>20 redistricting cycle whether the public was allowed</p> <p>21 access to the map room?</p> <p>22 A. I don't think the public typically</p> <p>23 would have access to the map room, no.</p> <p>24 Q. Do you think that's required?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 109</p> <p>1 in the process and appeared not to have been</p> <p>2 available to committee members beyond leadership."</p> <p>3 A. Where is that? Oh, this is 25, first</p> <p>4 paragraph?</p> <p>5 Q. Yes, sir?</p> <p>6 A. I see. Yes.</p> <p>7 Q. Upon what facts did you rely to</p> <p>8 formulate that opinion?</p> <p>9 A. So there are multiple times throughout</p> <p>10 the process where, you know, the chair is</p> <p>11 conferring with staff in order to formulate a</p> <p>12 response to other members of the committee --</p> <p>13 Q. Do you contend that's unusual --</p> <p>14 sorry, I don't mean to cut you off.</p> <p>15 Do you think that's unusual?</p> <p>16 A. I think there were opinions voiced by</p> <p>17 other members of the committee who said, "We</p> <p>18 didn't have, you know, as much access to staff in</p> <p>19 terms of the drawing of maps."</p> <p>20 I think that, you know, it was clear</p> <p>21 that at times that -- for example, when there's</p> <p>22 opposition to anything in terms of the plans that</p> <p>23 were being put forth, it's Mr. Terreni who is</p> <p>24 responding to these concerns, and it's very clear</p> <p>25 that there's not been any kind of exchange between</p>

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<p style="text-align: right;">Page 110</p> <p>1 opponents of these maps and staff of Mr. Terreni 2 or Ms. Vincent. 3 Q. Do you know whether members 4 affirmatively reached out to Mr. Terreni before 5 that? And do you think it's odd that legal 6 counsel for redistricting would respond to those 7 issues? 8 A. What strikes me is that there is the 9 dynamic that's playing out at these meetings where 10 it's clear that staff have been working with 11 leadership and not with these other members who 12 subsequently expressed their concerns about the 13 process. 14 Q. Every committee has a chairman, 15 correct, in the Senate? 16 A. Of course. 17 Q. Those chairmen or chairwomen are 18 responsible for hiring staff, correct? 19 A. Right. 20 Q. So they report to their chairman, 21 correct? 22 A. Sure. 23 Q. They're also available to other 24 members of the committee, correct? 25 A. Well, I know that, for example,</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. Before Footnote 79. 2 A. For example, when Representative 3 Bernstein and others expressed dismay at the 4 publication or production of a second House map 5 would be an example that they asked repeatedly why 6 are we doing this; why the need to do this; the 7 first map was supposedly a starting point; why do 8 we need to produce this map, this additional map; 9 what we could have done is amend the other. 10 Q. Is Bernstein in the Senate? 11 A. No. That would be an example of the 12 House. Let me -- this is a two-page section. Let 13 me just skim real quick, if you wouldn't mind. 14 MR. TRAYWICK: Sure. Take your time. 15 (The witness reviews the document, as 16 requested.) 17 THE WITNESS: Senator Harpootlian and 18 Senator Matthews are asking if any racially 19 polarized voting analysis was done or if they 20 intended to do that. It was their opinion that 21 that was necessary. And Mr. Terreni expressed his 22 opinion that it was not. 23 For Senator Harpootlian and Senator 24 Matthews, it would have been an elemental part of 25 the process in terms of not packing or cracking</p>
<p style="text-align: right;">Page 111</p> <p>1 Senator Harpootlian said that he had to hire his 2 own map drawer. And I think Senator Campsen told 3 him, no, you didn't. He said, "No, I absolutely 4 did." So there are examples like this where, you 5 know, it would seem that these other members are 6 not working with staff at all. 7 Q. As you conceded earlier, he never 8 explained why, right? He just said it? 9 A. He did not explain that at that time, 10 no. 11 Q. Turning to the next page, Page 26 of 12 your report. Do you have any opinions about the 13 August 3, 2021, House Ad Hoc Redistricting 14 Committee Meeting? 15 A. Let me look at this section. Whatever 16 opinions I have are in these three paragraphs. 17 Q. Back to Page 27. We already discussed 18 what you allege were serious transparency 19 concerns. Can you highlight what you meant by 20 "fundamental disagreement," about how to handle 21 the process? 22 A. Where is that, please? 23 Q. On Page 27. It's in that same 24 sentence we were focus- -- 25 A. Oh, I see.</p>	<p style="text-align: right;">Page 113</p> <p>1 black voters. And so in their opinion, that 2 should have been a part of the process. And 3 Mr. Terreni explained it was his opinion that 4 unless they were sued, that was not necessary. 5 BY MR. TRAYWICK: 6 Q. Anything other than RPV that you 7 describe as a fundamental disagreement? 8 A. Senator Harpootlian asked about 9 technical assistance, and that was shot down. So 10 those would be -- I mean, the most fundamental 11 would be RPV, which I think Senator Harpootlian 12 and Matthews argued would have been elemental to 13 this process, which that was rejected. 14 And you can see at the top of 28, 15 Senator Harpootlian says, "Well, we're just going 16 to wait for somebody to sue us." He expressed his 17 own concern that this was, quote, "going to be 18 cooked up in a back room," and so on. So those 19 are the fundamental disagreements. 20 Q. So you contend the Senate was required 21 to draw maps and provide technical assistance to 22 members of the public? 23 A. No. I'm saying -- simply reporting 24 that Senator Harpootlian and Matthews argue that 25 that should have been a part of the process --</p>

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Page 114	<p>1 elemental part of the process, and it was not.</p> <p>2 Q. Would you agree that the subcommittee</p> <p>3 agreed to include the Gingles factors as well as</p> <p>4 the case law addressing Section 2 claims as part</p> <p>5 of its guidelines per Senator Harpootlian's</p> <p>6 request?</p> <p>7 A. They added the Gingles and "its</p> <p>8 progeny" lines to the guidelines, yes.</p> <p>9 Q. Didn't the subcommittee also include</p> <p>10 Senator Margie Bright Matthews's amendments to</p> <p>11 include culture and linguistics into the</p> <p>12 guidelines?</p> <p>13 A. Yes, those were the two amendments.</p> <p>14 Those were the only two.</p> <p>15 Q. Didn't she make that amendment</p> <p>16 specifically in reference to Berkeley County?</p> <p>17 A. The Gullah-Geechee community, yes.</p> <p>18 Q. Wasn't the vote to reject Senator</p> <p>19 Harpootlian's proposal to eliminate, or at least</p> <p>20 place at the bottom, incumbency protection as</p> <p>21 criteria -- sorry, that's a bad question.</p> <p>22 Was it not a bipartisan vote to reject</p> <p>23 Senator Harpootlian's amendment to include</p> <p>24 incumbency protection, or at least place it at the</p> <p>25 bottom of the list?</p>	Page 116
Page 115	<p>1 A. Yes.</p> <p>2 Q. Was it also a biracial vote?</p> <p>3 A. Yes.</p> <p>4 Q. Turn to Page 29, if you will, with</p> <p>5 regard to "The House Public Hearings." In the</p> <p>6 first sentence of that third paragraph of your</p> <p>7 Section D there, you say that: "Most committee</p> <p>8 members appear to have given almost no weight to</p> <p>9 input received in these initial hearings."</p> <p>10 Upon what reliable historical methods</p> <p>11 or accepted principles did you reach that</p> <p>12 conclusion?</p> <p>13 A. Well, very little was done as a result</p> <p>14 of citizens' concerns in terms of what was -- what</p> <p>15 transpired at the subsequent meetings. About the</p> <p>16 only thing that seems to have carried significant</p> <p>17 weight were the residents of Beaufort, who had</p> <p>18 come forth and expressed their concerns about</p> <p>19 being in CD 1.</p> <p>20 Q. Was that the only change you contend</p> <p>21 resulted from public input?</p> <p>22 A. No. There were a few other things. I</p> <p>23 would have to scroll through. But I would say</p> <p>24 that there is a vast amount of the public</p> <p>25 testimony that was not -- either not -- well, I</p>	Page 117

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<p style="text-align: right;">Page 118</p> <p>1 Do you have any opinions about the</p> <p>2 November 12, 2021, meeting of that subcommittee?</p> <p>3 A. The ones that are contained herein.</p> <p>4 Q. What specific opinions are you</p> <p>5 authoring?</p> <p>6 A. Let me scan this two-page section.</p> <p>7 (The witness reviews the document, as</p> <p>8 requested.)</p> <p>9 THE WITNESS: This is the subcommittee</p> <p>10 meeting wherein the subcommittee heard from</p> <p>11 members of the public, who submitted their own</p> <p>12 Congressional plans. So I'm reporting here on</p> <p>13 what those individuals had to say to the</p> <p>14 committee.</p> <p>15 BY MR. TRAYWICK:</p> <p>16 Q. Were you aware that the League of</p> <p>17 Women Voters, ACLU, NAACP, and others were part of</p> <p>18 the coalition?</p> <p>19 A. Yes.</p> <p>20 Q. For purposes of this redistricting</p> <p>21 cycle?</p> <p>22 A. I am.</p> <p>23 Q. Was the South Carolina Progressive</p> <p>24 Network Education Fund part of that coalition?</p> <p>25 A. I'm not 100 percent certain, but I</p>	<p style="text-align: right;">Page 120</p> <p>1 from the northeast. He's from -- Jordan is from</p> <p>2 Florence. I believe Senator Rankin may be from</p> <p>3 Horry, if I'm not mistaken.</p> <p>4 Q. Do you think he was off base for</p> <p>5 suggesting that Berkeley and Horry County do not</p> <p>6 share communities of interests?</p> <p>7 A. Not necessarily, but there were --</p> <p>8 there seems to be a guideline for, sort of,</p> <p>9 rejecting any and everything, if that makes sense.</p> <p>10 What struck me of interest here, this</p> <p>11 is an example of saying let's take a plan, find</p> <p>12 the one thing that could be paired with the</p> <p>13 guideline that doesn't fit and then grow out that</p> <p>14 plan, if that makes sense.</p> <p>15 Q. I'm going to show you what will now</p> <p>16 be, I believe, Exhibit 6 to your deposition, the</p> <p>17 Senate redistricting guidelines. I'll give you a</p> <p>18 minute to look through, as we share that in</p> <p>19 Exhibit Share. If you wouldn't mind letting me</p> <p>20 know when that hits your screen.</p> <p>21 (Exhibit 6, 2021 Redistricting</p> <p>22 Guidelines, SC Senate Judiciary Committee</p> <p>23 Redistricting Subcommittee, marked for</p> <p>24 identification.)</p> <p>25 BY MR. TRAYWICK:</p>
<p style="text-align: right;">Page 119</p> <p>1 think so.</p> <p>2 Q. Aside from that, you discuss only one</p> <p>3 other person, correct -- or two other people?</p> <p>4 A. There is the young woman from</p> <p>5 Stanford; Eric Johnson, of the South Carolina</p> <p>6 Coalition of Black Communities; Brett Bursey of</p> <p>7 the South Carolina Progressive Network Education</p> <p>8 Fund.</p> <p>9 Q. Which was part of the coalition,</p> <p>10 though, right?</p> <p>11 A. Right. Yes.</p> <p>12 Q. Regarding the plan submitted that</p> <p>13 added Berkeley and Horry County together, do you</p> <p>14 understand the difference between the Grand Strand</p> <p>15 and the Lowcountry in South Carolina?</p> <p>16 A. I do.</p> <p>17 Q. What is your understanding of the</p> <p>18 difference between those two regions?</p> <p>19 A. The Lowcountry is the old planation</p> <p>20 belt, the swampy lowlands to the south of the</p> <p>21 state. The Grand Strand is, like, Myrtle Beach.</p> <p>22 Obviously, Horry County, upper northeast coast.</p> <p>23 Q. Do you know where Senator Rankin's</p> <p>24 district is located?</p> <p>25 A. I believe Senator Rankin is -- he is</p>	<p style="text-align: right;">Page 121</p> <p>1 Q. Do you see that, Dr. Bagley?</p> <p>2 A. We're refreshing over and over. For</p> <p>3 whatever reason, it seems to be taking a minute.</p> <p>4 Q. Take your time. Let me know when you</p> <p>5 see it.</p> <p>6 A. I think we have it now.</p> <p>7 Q. Have you seen this document before?</p> <p>8 A. Yes.</p> <p>9 Q. Is it your understanding that these</p> <p>10 are the guidelines that the South Carolina Senate</p> <p>11 adopted for redistricting this cycle?</p> <p>12 A. It is.</p> <p>13 Q. A minute ago in your testimony you</p> <p>14 mentioned there seemed to be guidelines for</p> <p>15 rejecting anything and everything. Can you point</p> <p>16 to me on which page you can find that?</p> <p>17 A. I don't mean it as stated, obviously,</p> <p>18 explicitly in the guidelines. I just mean that</p> <p>19 when alternative plans are put forth, you could</p> <p>20 nitpick any one single thing and say, okay, that</p> <p>21 Koi (sic) doesn't match. You know, this is --</p> <p>22 doesn't respect this community of interest or that</p> <p>23 community of interest, or, you know, there are too</p> <p>24 many precincts that aren't kept whole, and so on.</p> <p>25 Q. The same is true for any plan, right?</p>

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Page 122	<p>1 A. Right.</p> <p>2 Q. Will you look at Number 2 for me, if</p> <p>3 you don't mind. Sorry, this is Part 1,</p> <p>4 Section A2, labeled "Congressional Districts."</p> <p>5 A. Yes.</p> <p>6 Q. Would you agree that one of the</p> <p>7 criteria -- or I should say guidelines, to be more</p> <p>8 precise, was preserving the cores of prior</p> <p>9 districts?</p> <p>10 A. That is one of the considerations,</p> <p>11 yes. Specifically avoiding contests between</p> <p>12 incumbents.</p> <p>13 Q. And preserving cores and respecting</p> <p>14 political subdivision boundaries, correct?</p> <p>15 A. Right.</p> <p>16 Q. Dr. Bagley, are you aware of any</p> <p>17 statute or case law that requires the General</p> <p>18 Assembly to conduct racial polarizing analysis on</p> <p>19 the front end?</p> <p>20 A. No. I would point out, as Senator</p> <p>21 Harpootlian said, that -- you know, it's his</p> <p>22 opinion that if the states did that -- there is a</p> <p>23 state entity that did that for, say, school</p> <p>24 boards, that it was his opinion that it ought to</p> <p>25 be done in this case.</p>	Page 124	<p>1 A. How do you mean, exactly? Could you</p> <p>2 maybe restate?</p> <p>3 Q. Racially polarized voting analysis for</p> <p>4 black voters in South Carolina, do you know what</p> <p>5 that general trend is?</p> <p>6 A. That black voters tend to vote for</p> <p>7 black candidates, but not exclusively, and that</p> <p>8 white voters would tend to vote as a block to</p> <p>9 block the candidates of choice for black voters.</p> <p>10 Q. Is that what RPV means, or does it</p> <p>11 mean that white voters tend to vote Republican?</p> <p>12 A. I think it means both.</p> <p>13 Q. But white voters vote Democrats, too,</p> <p>14 correct?</p> <p>15 A. Some of them do.</p> <p>16 Q. Do you have any idea what the</p> <p>17 percentage is there?</p> <p>18 A. In terms of white South Carolinians</p> <p>19 who vote Democrats?</p> <p>20 Q. Yes, sir.</p> <p>21 A. I don't know that number off the top</p> <p>22 of my head. I would hate to speculate and be</p> <p>23 incorrect.</p> <p>24 Q. Sure. I don't want you to speculate.</p> <p>25 I appreciate that.</p>
Page 123	<p>1 Q. If attention were paid significantly</p> <p>2 to that, can't we end up on the other end, too,</p> <p>3 that race was considered too much? Would you</p> <p>4 agree with that?</p> <p>5 A. That is, under the Shaw paradigm, that</p> <p>6 could be the case.</p> <p>7 Q. So the General Assembly would be</p> <p>8 facing a lawsuit either way, right?</p> <p>9 A. I don't know if I would characterize</p> <p>10 it that way.</p> <p>11 Q. Do you think an RPV would have</p> <p>12 mattered here?</p> <p>13 A. Do I think RPV would matter?</p> <p>14 Q. Would have mattered here?</p> <p>15 A. You know, that's outside the scope, I</p> <p>16 think, of what I'm being asked.</p> <p>17 Q. So you're just presenting what he</p> <p>18 argued; you're not offering an opinion one way or</p> <p>19 the other on it?</p> <p>20 A. Not on whether or not RPV analysis</p> <p>21 should have been performed, no.</p> <p>22 Q. Do you know what RPV numbers are in</p> <p>23 South Carolina?</p> <p>24 A. The whole state?</p> <p>25 Q. Yes.</p>	Page 125	<p>1 So is it your position that the Senate</p> <p>2 intentionally discriminated against black people</p> <p>3 by not conducting an RPV analysis?</p> <p>4 A. No. I'm simply reporting that there</p> <p>5 are members of the committee that thought that</p> <p>6 that should have been done, that that would have</p> <p>7 been an elemental part of the process, and</p> <p>8 ultimately that was not done.</p> <p>9 Q. So you don't know one way or another</p> <p>10 whether that's even legally required?</p> <p>11 A. I don't offer an opinion on that.</p> <p>12 Q. Is it your position that the Senate</p> <p>13 intentionally discriminated against black people</p> <p>14 by relying on political data?</p> <p>15 A. Could you restate?</p> <p>16 Q. Sure. I'll be glad to.</p> <p>17 Is it your position that if the Senate</p> <p>18 relied on political data, that would constitute</p> <p>19 intentional racial discrimination against black</p> <p>20 people?</p> <p>21 A. No.</p> <p>22 Q. On Page 31 of your report, you cite</p> <p>23 Ms. Aden's testimony. Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Wherein, it said that black voters</p>

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<p style="text-align: right;">Page 126</p> <p>1 only had representation in 14 percent of the</p> <p>2 state's Congressional delegation. Do you see</p> <p>3 that?</p> <p>4 A. Yes.</p> <p>5 Q. Are you aware that the Congressional</p> <p>6 delegation consists of both Congress persons and</p> <p>7 U.S. Senators?</p> <p>8 A. Which would include Senator Scott. So</p> <p>9 what I mean there is the House representatives</p> <p>10 delegation.</p> <p>11 Q. So 14 percent there. But would you</p> <p>12 agree that when it's 2 out of 9 members of the</p> <p>13 actual delegation, that's 22 percent?</p> <p>14 A. Yes. Although -- and I don't have the</p> <p>15 numbers in front of me -- I don't believe that</p> <p>16 Senator Scott is the candidate of choice of black</p> <p>17 voters. He is, of course, himself a black man.</p> <p>18 Q. Does he not represent black people?</p> <p>19 Is that your assertion?</p> <p>20 A. I'm saying I don't think he is the</p> <p>21 candidate of choice of black voters.</p> <p>22 Q. Do you know what the numbers are on</p> <p>23 that?</p> <p>24 A. I don't have them in front of me.</p> <p>25 Q. On Page 32, Dr. Bagley, do you have</p>	<p style="text-align: right;">Page 128</p> <p>1 the process of the drafting of the map, which to</p> <p>2 me would seem to be significant for the court in</p> <p>3 making its determination. Public feedback was</p> <p>4 also overwhelmingly negative.</p> <p>5 Also, this is the meeting in which I</p> <p>6 think it comes to light also that members of staff</p> <p>7 had communications with the Republican National</p> <p>8 Redistricting Trust.</p> <p>9 Q. Do you know what those communications</p> <p>10 were about?</p> <p>11 A. No.</p> <p>12 Q. Do you know whether the Republican</p> <p>13 National Redistricting Trust played a role at all</p> <p>14 in the map of this precinct?</p> <p>15 A. I believe Chairman Jordan later said</p> <p>16 that they provided input on the process. Someone</p> <p>17 asked were they solicited, and he said, "I</p> <p>18 wouldn't say they were solicited; they provided</p> <p>19 input that we considered."</p> <p>20 Q. Everyone provided input, right? That</p> <p>21 we've been talking about; have we not?</p> <p>22 A. Multiple people provided input at the</p> <p>23 hearings. We're talking about behind-the-scenes</p> <p>24 input.</p> <p>25 Q. We talked about this earlier. There's</p>
<p style="text-align: right;">Page 127</p> <p>1 any opinions about the Senate's fourth</p> <p>2 subcommittee meeting?</p> <p>3 A. Those are contained in Pages 32</p> <p>4 through 34. Yes.</p> <p>5 Q. Any opinions in particular, though?</p> <p>6 This is your recitation of events?</p> <p>7 A. Let me scan, please.</p> <p>8 (The witness reviews the document, as</p> <p>9 requested.)</p> <p>10 THE WITNESS: So this particular</p> <p>11 meeting was falling upon the staff drafting a</p> <p>12 Congressional plan, publishing that on</p> <p>13 November 23rd. Committee meets on 29th. They get</p> <p>14 feedback on that. And I explain that there were</p> <p>15 people who came forth with some criticism of that.</p> <p>16 I'm not sure how to answer your</p> <p>17 question in terms of outside of just reciting</p> <p>18 what's contained in the three pages.</p> <p>19 BY MR. TRAYWICK:</p> <p>20 Q. Part of my deposition of you is to</p> <p>21 ascertain what opinions you have. So I want to</p> <p>22 make sure I understand what opinion you have here.</p> <p>23 A. My opinion is that it appears, from</p> <p>24 what was said at this meeting, that certain</p> <p>25 lawmakers argued that they didn't have any role in</p>	<p style="text-align: right;">Page 129</p> <p>1 multiple ways to receive input, right? Not just</p> <p>2 showing up and testifying at the public hearing;</p> <p>3 would you agree with that?</p> <p>4 A. Yes.</p> <p>5 Q. So public feedback being</p> <p>6 overwhelmingly negative, as you suggest on</p> <p>7 Page 32, was just based on the folks who showed up</p> <p>8 and testified, correct?</p> <p>9 A. On what was available. There was</p> <p>10 publicly submitted feedback in terms of written</p> <p>11 testimony that the Senate published on its</p> <p>12 website, references made at times to public</p> <p>13 feedback that was provided.</p> <p>14 There was written testimony provided</p> <p>15 to the House, but to my knowledge, that was not</p> <p>16 published or available. So I was unable to review</p> <p>17 that.</p> <p>18 Q. Would you agree that Senator Rankin</p> <p>19 said at the prior meeting that a plan was going to</p> <p>20 roll out in November and the committee would meet</p> <p>21 again at that time?</p> <p>22 A. Yes.</p> <p>23 Q. So are you suggesting that staff</p> <p>24 intentionally waited until Thanksgiving to dump a</p> <p>25 plan on everybody?</p>

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<p style="text-align: right;">Page 130</p> <p>1 A. I'm not suggesting that, but I'm</p> <p>2 reporting that members of the committee suggested</p> <p>3 that.</p> <p>4 Q. If it was ready, should they have sat</p> <p>5 on it until after Thanksgiving?</p> <p>6 A. I don't offer opinion on that, other</p> <p>7 than, again, reporting that some members of the</p> <p>8 committee were -- took issue with that.</p> <p>9 Q. Would you agree that staff should</p> <p>10 release a plan when it's ready?</p> <p>11 A. I would agree that probably all</p> <p>12 members of the committee ought to be aware of the</p> <p>13 timeline, aware of the parameters of a plan and,</p> <p>14 you know, not be blindsided by it, and argue that</p> <p>15 it was released in an untimely fashion.</p> <p>16 Senator Matthews says at one point</p> <p>17 that she's trying to prepare for depositions and</p> <p>18 had to clear her schedule, just for example.</p> <p>19 Q. You agree that in scheduling these</p> <p>20 meetings, staff has to take into account all of</p> <p>21 those members' schedules, which can be difficult</p> <p>22 because they're all lawyers, right?</p> <p>23 A. I can imagine.</p> <p>24 Q. Would you agree that it takes a while</p> <p>25 to draft a redistricting map, or do you know?</p>	<p style="text-align: right;">Page 132</p> <p>1 took this cycle?</p> <p>2 A. Off the top of my head, I don't have</p> <p>3 that comparison.</p> <p>4 Q. Page 32, you mention Will Roberts's</p> <p>5 statements during the November 29th hearing,</p> <p>6 calling this a "minimal change plan." Do you</p> <p>7 dispute that this was a minimal change plan?</p> <p>8 A. No.</p> <p>9 Q. Regarding Sun City, do you remember</p> <p>10 expressing that, that Senator Margie Bright</p> <p>11 Matthews brought up?</p> <p>12 A. I remember that, yes.</p> <p>13 Q. Were you aware that that change was</p> <p>14 incorporated into the plan?</p> <p>15 A. It was.</p> <p>16 Q. You also indicate that staff heard</p> <p>17 from Congressman Clyburn. Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. Did you think it was inappropriate for</p> <p>20 the General Assembly to draw his district similar</p> <p>21 to his existing one?</p> <p>22 A. Could you ask again?</p> <p>23 Q. Sure. Do you think it was</p> <p>24 inappropriate for the General Assembly to draw his</p> <p>25 district similar to his existing one?</p>
<p style="text-align: right;">Page 131</p> <p>1 A. It takes a while? Yes, it's a</p> <p>2 complicated process.</p> <p>3 Q. Were you aware that in November</p> <p>4 plaintiffs had already filed suit?</p> <p>5 A. Yes.</p> <p>6 Q. Were you aware that the basis of that</p> <p>7 suit was that the General Assembly was moving too</p> <p>8 slow?</p> <p>9 A. Yes.</p> <p>10 Q. Were you aware that the position was</p> <p>11 taken in these public meetings that the General</p> <p>12 Assembly was somehow simultaneously moving too</p> <p>13 fast?</p> <p>14 A. I think one influences the other. If</p> <p>15 you move too slow to begin with and then you're</p> <p>16 under a deadline, you necessarily have to move</p> <p>17 very quickly.</p> <p>18 Q. When did the census data came out?</p> <p>19 A. I understand it came out late.</p> <p>20 Q. That was abnormal, correct?</p> <p>21 A. It was the result, arguably, of the</p> <p>22 pandemic.</p> <p>23 Q. Do you have any reference point for</p> <p>24 how long the redistricting process took in prior</p> <p>25 cycles as compared to how many weeks or months it</p>	<p style="text-align: right;">Page 133</p> <p>1 A. I know that a great many members of</p> <p>2 the public and members of the committee argued</p> <p>3 that under the circumstances, in their opinion,</p> <p>4 that that district should not contain the black</p> <p>5 voters of Columbia in the same district with black</p> <p>6 voters of Charleston that, they argue, were carved</p> <p>7 out of metropolitan Charleston to put together</p> <p>8 that district, as have been done by necessity some</p> <p>9 decades prior.</p> <p>10 Q. Even without necessity, though, in</p> <p>11 2011 it was upheld, correct?</p> <p>12 A. That was upheld under the</p> <p>13 circumstances at that time, yes.</p> <p>14 Q. What do you mean by "under the</p> <p>15 circumstances at that time"? That seems to be a</p> <p>16 qualifier.</p> <p>17 A. All I can tell you is that the</p> <p>18 testimony and the arguments of these committee</p> <p>19 members were that the district as constructed as</p> <p>20 such represented an unnecessary carving up of</p> <p>21 black communities and putting them into that</p> <p>22 district.</p> <p>23 Q. Again, only the opponents to the plan</p> <p>24 argued that, correct?</p> <p>25 A. Well, yes. They're the only ones,</p>

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<p style="text-align: right;">Page 134</p> <p>1 most of the time, saying anything at all.</p> <p>2 Q. So you contend members of the majority</p> <p>3 were just numb the whole time?</p> <p>4 A. They were pretty quiet.</p> <p>5 Q. Did you include their statements in</p> <p>6 your recitation of the legislative history?</p> <p>7 A. I did, and that's -- if it seems like</p> <p>8 I didn't, that would be because, again, they're</p> <p>9 not hardly saying anything at all.</p> <p>10 Q. Would you agree that every time you</p> <p>11 did mention a statement, it was in the context of</p> <p>12 what other people disagreed with them about?</p> <p>13 A. Those are pretty much the only</p> <p>14 conversations that are being had.</p> <p>15 Q. You are aware that plaintiffs did not</p> <p>16 challenge Congressional District 6 here, correct?</p> <p>17 A. Yes.</p> <p>18 Q. They're not challenging its</p> <p>19 constitutionality, right?</p> <p>20 A. That's right.</p> <p>21 Q. How does that affect the analysis of</p> <p>22 the other districts?</p> <p>23 A. How do you mean?</p> <p>24 Q. So if they're not challenging the</p> <p>25 constitutionality of District 6, you would</p>	<p style="text-align: right;">Page 136</p> <p>1 what justified leaving that in there. I know</p> <p>2 there were people who disagreed with that pretty</p> <p>3 strongly.</p> <p>4 Q. Do you recall a court addressing that</p> <p>5 in prior cases, upon your review of the case law?</p> <p>6 A. I don't recall off the top of my head.</p> <p>7 Q. If Joe Wilson wins reelection and is</p> <p>8 slated to become chair of the Armed Services</p> <p>9 Committee, don't you think that would be helpful</p> <p>10 to those constituents in Fort Jackson to represent</p> <p>11 them?</p> <p>12 A. Perhaps. But, obviously, there were</p> <p>13 people who disagreed with that and thought there</p> <p>14 were more paramount concerns.</p> <p>15 Q. Would you agree that the Port of</p> <p>16 Charleston is important economically to South</p> <p>17 Carolina?</p> <p>18 A. Of course.</p> <p>19 Q. Do you think it's important to have</p> <p>20 the Majority Whip of the United States House of</p> <p>21 Representatives representing one of South</p> <p>22 Carolina's largest economic entities?</p> <p>23 A. I know Senator Campsen argued that it</p> <p>24 was beneficiary for Charleston to have two</p> <p>25 representatives for Charleston. He said there</p>
<p style="text-align: right;">Page 135</p> <p>1 agree -- we talked about this earlier -- it's</p> <p>2 contiguous and adjacent to District 1, right?</p> <p>3 A. Yes.</p> <p>4 Q. Doesn't it become a function of</p> <p>5 geography and numbers at that point?</p> <p>6 A. Well, I think the point here is --</p> <p>7 that people are making in the hearings and in</p> <p>8 their submitted testimony, is that it's the</p> <p>9 packing unnecessarily of black voters in the 6</p> <p>10 that allows you to crack black voters elsewhere</p> <p>11 and to minimize their numbers elsewhere and to</p> <p>12 minimize their ability to get candidates of choice</p> <p>13 elected in CD 1, for example.</p> <p>14 Q. Have plaintiffs brought a Section 2</p> <p>15 challenge?</p> <p>16 A. No.</p> <p>17 Q. Do you know where Congressman Clyburn</p> <p>18 lives?</p> <p>19 A. In Columbia, I assume.</p> <p>20 Q. Do you think it was inappropriate for</p> <p>21 the General Assembly to put -- to keep Fort</p> <p>22 Jackson in Congressional District 2, which is</p> <p>23 currently occupied and represented by Joe Wilson?</p> <p>24 A. I understand the argument was that</p> <p>25 Mr. Wilson is on the Defense Committee and it's</p>	<p style="text-align: right;">Page 137</p> <p>1 were people arguing that, when no one actually</p> <p>2 made that argument at all.</p> <p>3 Q. That you saw, right, or that you</p> <p>4 heard?</p> <p>5 A. I mean, Senator Campsen could have</p> <p>6 heard from constituents personally, but it's not</p> <p>7 in the public record.</p> <p>8 Q. So was he limited to the public record</p> <p>9 in making decisions, or could he listen to his</p> <p>10 constituents back home?</p> <p>11 A. He could certainly listen to his</p> <p>12 constituents. All I have to go on is the public</p> <p>13 record.</p> <p>14 Q. Would you agree that not everybody</p> <p>15 comes and shows up to a hearing? Constituents</p> <p>16 make phone calls all the time. They see people at</p> <p>17 restaurants. They see people at events. Would</p> <p>18 you agree with that?</p> <p>19 A. I would, but it seems as though</p> <p>20 Senator Campsen refers, at a certain point, to</p> <p>21 actually submitted written testimony.</p> <p>22 Q. Can you point to me where that was, in</p> <p>23 what point of your report, and in what meeting he</p> <p>24 said that?</p> <p>25 A. He certainly says he has heard from</p>

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<p style="text-align: right;">Page 138</p> <p>1 people on that. Chairman Jordan, I believe, is 2 one who makes reference to this mountain of 3 written testimony for people wanting Beaufort to 4 be in CD 1. I can't find...</p> <p>5 Q. There was public testimony on that, 6 you would agree, right?</p> <p>7 A. There was some, yes.</p> <p>8 Q. Dr. Bagley, on Pages 34 through 37 of 9 your report, discussing the House Redistricting Ad 10 Hoc Committee meeting --</p> <p>11 A. Yes.</p> <p>12 Q. -- you indicate the position taken 13 before the committee, that Charleston being whole 14 ought to take precedence. Why is that?</p> <p>15 A. Where is that in this section?</p> <p>16 Q. I'm sorry. It's in the last sentence 17 of the third full paragraph on Page 35.</p> <p>18 A. Third full paragraph, beginning: 19 "Misdeeds"?</p> <p>20 Q. Yes, the last full sentence there.</p> <p>21 A. "Bringing the Charlotte suburbs all 22 the way down to Richland"? Or you mean the third 23 full paragraph of the section, beginning: 24 "Mr. Cunningham"?</p> <p>25 Q. The third full paragraph, starting:</p>	<p style="text-align: right;">Page 140</p> <p>1 A. Yes.</p> <p>2 Q. So is it really accurate to say, 3 quote, "keep Charleston whole," when it hasn't 4 been whole? Didn't they want the committee to 5 draw a new district to make Charleston whole?</p> <p>6 A. It depends on your point of departure, 7 I guess. If your point of departure is the 8 existing plan, okay. If your point of departure 9 was to say let's look at the map of voters of 10 South Carolina, keep that community whole as a 11 community, then that's a different way of looking 12 at it.</p> <p>13 Q. Preserving cores was one of the 14 guidelines, correct?</p> <p>15 A. That is one of them.</p> <p>16 Q. On Pages 36 to 37, can you point to me 17 anyone, aside from Democrats, on whom you relied 18 to formulate this recitation of events?</p> <p>19 A. This is similar to other meetings. 20 They're the ones doing the majority of the 21 talking.</p> <p>22 Q. Would you agree Chairman Jordan 23 answered their questions?</p> <p>24 A. There was no point at which he flatly 25 refused to answer a question, if that's what you</p>
<p style="text-align: right;">Page 139</p> <p>1 "Mrs. Teague." It's the last sentence there, 2 about what she said. On Page 35. Are you on the 3 right page?</p> <p>4 A. I'm sorry. I'm sorry. I was on 34. 5 That's my mistake.</p> <p>6 Q. Take your time. Take your time. I'm 7 sorry if I confused you.</p> <p>8 A. Regarding: "An either/or situation 9 with Charleston being whole, but that, if it was, 10 Charleston being whole ought to take precedence." 11 Yes.</p> <p>12 Q. Do you agree with that?</p> <p>13 A. I don't think it's for me to offer my 14 opinion on that. I'm simply reporting what people 15 are arguing regarding their position.</p> <p>16 Q. Do you know whether Charleston has 17 been whole at any time in the last 50 years?</p> <p>18 A. It's been split since it was 19 deliberately split in order to satisfy, at the 20 time, interpretation of the Voting Rights Act.</p> <p>21 Q. Notwithstanding what we've talked 22 about in Backus, right?</p> <p>23 A. Right.</p> <p>24 Q. The litigation that postdated Shelby, 25 correct?</p>	<p style="text-align: right;">Page 141</p> <p>1 mean.</p> <p>2 Q. Are you aware that Representative 3 Bernstein voted in favor of the House plan?</p> <p>4 A. You cut out on me. That she what?</p> <p>5 Q. Are you aware that Representative 6 Bernstein voted in favor of the House plan?</p> <p>7 A. At what point?</p> <p>8 Q. At every point; did she not?</p> <p>9 A. I don't have the record in front of 10 me.</p> <p>11 Q. Do you have any reason to dispute that 12 Representative Bernstein voted in favor of passing 13 the House redistricting plan this cycle?</p> <p>14 A. Could you restate?</p> <p>15 Q. Sure. House, not Congress?</p> <p>16 A. Oh, okay. All right. Then, yes.</p> <p>17 Q. Do you have in here what -- any 18 explanation of what Republicans said in response 19 to the Democrats' complaints?</p> <p>20 A. Any responses that they offered, I 21 tried to effectively summarize. There's nothing I 22 intentionally left out.</p> <p>23 Q. On Page 37, you include Chairman 24 Jordan's explanation that the House was trying to 25 work with everybody's schedules and juggle the</p>

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Page 142	<p>1 holidays; is that true?</p> <p>2 A. Yes.</p> <p>3 Q. He references a timeliness issue. Do</p> <p>4 you see that?</p> <p>5 A. Which paragraph?</p> <p>6 Q. It is the last full paragraph above</p> <p>7 Subsection I, and it's that last sentence there</p> <p>8 that starts with, "again."</p> <p>9 A. Yes, I see that.</p> <p>10 Q. Were you aware that litigation was</p> <p>11 pending against House and Senate leadership at</p> <p>12 that time?</p> <p>13 A. It was.</p> <p>14 Q. Were you aware that the Federal Court</p> <p>15 had set a deadline by which the General Assembly</p> <p>16 needed to act, or the parties would have to appear</p> <p>17 for a status conference to discuss next steps?</p> <p>18 A. Yes.</p> <p>19 Q. In Subsection I, you mention the video</p> <p>20 of the meetings starting late. Certainly you</p> <p>21 recognize that technical difficulties can arise</p> <p>22 with the online videoing of hearings, correct?</p> <p>23 A. These things do happen. It just -- it</p> <p>24 was highly unfortunate in terms of that</p> <p>25 potentially being, you know, an important part of</p>	Page 144	<p>1 A. Let me skim this section. There were</p> <p>2 so many meetings.</p> <p>3 (The witness reviews the document, as</p> <p>4 requested.)</p> <p>5 THE WITNESS: I will tell you that</p> <p>6 Representative King was very upset. Again, there</p> <p>7 were others who expressed solidarity with him. In</p> <p>8 that meeting, the only explanation given, I think,</p> <p>9 was that Chairman Murphy had written a note to</p> <p>10 Representative Newton. Representative Newton then</p> <p>11 didn't reference, like, any specific rule or</p> <p>12 change or anything like that. So, yes, there were</p> <p>13 some serious concerns about that.</p> <p>14 BY MR. TRAYWICK:</p> <p>15 Q. Were you aware that Chairman Murphy</p> <p>16 was deposed recently?</p> <p>17 A. I am not aware.</p> <p>18 Q. As we mentioned earlier, the</p> <p>19 plaintiffs had already sued members of the General</p> <p>20 Assembly at this point, correct?</p> <p>21 A. Right.</p> <p>22 Q. Were you aware that Chairman Murphy</p> <p>23 was one of the named defendants?</p> <p>24 A. Yes.</p> <p>25 Q. Are you aware that Representative</p>
Page 143	<p>1 the record that's just not there.</p> <p>2 Q. Certainly members of the public were</p> <p>3 free to attend the meeting in person, right?</p> <p>4 A. Correct.</p> <p>5 Q. On Page 38, at the very top -- we went</p> <p>6 through this earlier -- are you suggesting it was</p> <p>7 a procedural irregularity for Representative</p> <p>8 Newton to preside over the Judiciary Subcommittee</p> <p>9 meeting at the request of Chairman Chris Murphy</p> <p>10 instead of John King?</p> <p>11 A. Representative King certainly thought</p> <p>12 that, as did others who later expressed solidarity</p> <p>13 with him in that matter.</p> <p>14 Q. So just because John King did not</p> <p>15 personally preside over a meeting, that renders</p> <p>16 the process suspect? Is that your contention?</p> <p>17 A. That was the contention of multiple</p> <p>18 members of the General Assembly.</p> <p>19 Q. Was that even relating to the map that</p> <p>20 got passed?</p> <p>21 A. You cut out, sorry.</p> <p>22 Q. Sorry about that.</p> <p>23 Was that committee meeting even</p> <p>24 related to the actual map that was ultimately</p> <p>25 enacted by the General Assembly?</p>	Page 145	<p>1 Newton is a lawyer?</p> <p>2 A. Yes.</p> <p>3 Q. Are you aware that Representative King</p> <p>4 is not a lawyer?</p> <p>5 A. I am aware of that, but I would say</p> <p>6 this was not the explanation that was given at the</p> <p>7 time.</p> <p>8 Q. Do you know what the explanation was?</p> <p>9 A. Again, I think Representative Newton</p> <p>10 simply said that Chairman Murphy had written him a</p> <p>11 note and asked him to preside.</p> <p>12 Q. Do you know why Chairman Murphy</p> <p>13 couldn't preside at the time?</p> <p>14 A. He did not say.</p> <p>15 Q. Did you know he was sick?</p> <p>16 A. I did not know that.</p> <p>17 Q. Pages 39 to 42 is discussing the full</p> <p>18 House of Representatives session, January 12,</p> <p>19 2022?</p> <p>20 A. Yes.</p> <p>21 MR. INGRAM: Do you mind if we take a</p> <p>22 five-minute break before you get to the next line</p> <p>23 of questioning?</p> <p>24 MR. TRAYWICK: Sure. We'll come back</p> <p>25 at 2:46.</p>

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<p style="text-align: right;">Page 146</p> <p>1 (A recess was taken.)</p> <p>2 MR. INGRAM: We are back and ready to</p> <p>3 go.</p> <p>4 BY MR. TRAYWICK:</p> <p>5 Q. Thank you, Dr. Bagley.</p> <p>6 On Page 38, at the bottom there, you</p> <p>7 note that: "Representative Thigpen questioned the</p> <p>8 reasoning for creating an entirely new map based</p> <p>9 on complaints of one community."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And he said: "What made one county's</p> <p>13 concerns rise to the level of triggering a whole</p> <p>14 new map?"</p> <p>15 Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. How is that any different than what</p> <p>18 Charleston was demanding?</p> <p>19 A. I can tell you there are people who</p> <p>20 ask was it not possible for Beaufort and</p> <p>21 Charleston to be kept whole within CD 1. There</p> <p>22 was a point in time at which Representative</p> <p>23 Bernstein asked if this was possible, and Chairman</p> <p>24 Jordan said he did not believe it was. This later</p> <p>25 came up where other legislators pointed out that</p>	<p style="text-align: right;">Page 148</p> <p>1 said, I'm not intentionally leaving anything out.</p> <p>2 Q. The instances in which the members of</p> <p>3 the majority did speak, you then seek to discredit</p> <p>4 it with what members of the minority party said,</p> <p>5 correct?</p> <p>6 A. No. I'm simply laying out the</p> <p>7 dialogue, the arguments that are taking place.</p> <p>8 Q. In a fully objective manner?</p> <p>9 A. I would hope so.</p> <p>10 Q. How about on Page 39, where you opine</p> <p>11 that the debate demonstrated the legislative</p> <p>12 leadership's tendency to weigh some guidelines and</p> <p>13 some testimony more heavily than others?</p> <p>14 How did you arrive at that opinion,</p> <p>15 and upon what reliable and accepted standards of</p> <p>16 procedure did you base that opinion?</p> <p>17 A. Well, that's cutting to what we were</p> <p>18 just talking about, the weighing of the evidence</p> <p>19 of the -- I think it was the five people who came</p> <p>20 forward from Beaufort, and weighing that more</p> <p>21 heavily than the people that came forward about</p> <p>22 Charleston.</p> <p>23 Q. As you agreed earlier, you don't know</p> <p>24 how any individual member weighed various</p> <p>25 evidence, do you?</p>
<p style="text-align: right;">Page 147</p> <p>1 it was their opinion it was, in fact, possible.</p> <p>2 So I don't know, like Ms. Teague was</p> <p>3 suggesting it might be the case, it was either/or</p> <p>4 scenario, that it could have been done without</p> <p>5 splitting either one of them.</p> <p>6 Q. Did it have to?</p> <p>7 A. I'm sorry?</p> <p>8 Q. Are you contending that the General</p> <p>9 Assembly had to keep them both together or keep</p> <p>10 them both whole?</p> <p>11 A. I'm not saying the General Assembly</p> <p>12 had to do anything.</p> <p>13 Q. Because certainly they have to make</p> <p>14 any number of judgment calls in putting together a</p> <p>15 complex Congressional map, correct?</p> <p>16 A. That's right, as in a general sense.</p> <p>17 Q. On Pages 39 to 42 of your report, this</p> <p>18 relates to the full House of Representatives</p> <p>19 debate?</p> <p>20 A. Yes.</p> <p>21 Q. I'm wondering if you included anywhere</p> <p>22 what any members of the majority party said about</p> <p>23 the plan?</p> <p>24 A. Insofar as they said anything, it</p> <p>25 should be summarized in this section. Like I</p>	<p style="text-align: right;">Page 149</p> <p>1 A. I'm not in their mind. Of course.</p> <p>2 Q. In discussing what happened, you agree</p> <p>3 you primarily relied on the statements of</p> <p>4 Democrats?</p> <p>5 A. I'm not attempting to, in the draft</p> <p>6 report, to do that. If it weighs more heavily to</p> <p>7 that side, that's because they were the ones who</p> <p>8 were the most vocal. Members of the majority, as</p> <p>9 I said, said very little at many of these</p> <p>10 legislative sessions and hearings.</p> <p>11 Q. You're familiar with the Senate</p> <p>12 procedure of a filibuster, correct?</p> <p>13 A. Yes.</p> <p>14 Q. In legislative procedure, in your</p> <p>15 experience, are opponents of the legislation most</p> <p>16 often the most vocal?</p> <p>17 A. In a filibuster?</p> <p>18 Q. In general, on debating any</p> <p>19 legislation?</p> <p>20 A. I don't know that I would say that</p> <p>21 necessarily.</p> <p>22 Q. Do you contend that opponents to</p> <p>23 legislation in their opinions are dispositive of</p> <p>24 legislative intent?</p> <p>25 A. I'm saying that insofar as there's a</p>

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<p style="text-align: right;">Page 150</p> <p>1 dearth of commentary from members of the majority</p> <p>2 in my report, it is because there is a dearth of</p> <p>3 that in the record. It is not a selectivity</p> <p>4 issue.</p> <p>5 Q. On Page 42, turning to the "Final</p> <p>6 Senate Judiciary Redistricting Subcommittee</p> <p>7 Meeting, re: Congressional Districts," would you</p> <p>8 agree that Mr. Opperman submitted a plan that did</p> <p>9 not satisfy the one-person/one-vote requirement?</p> <p>10 A. He explained that it -- I think the</p> <p>11 deviation was 4 percent. And his argument was</p> <p>12 that that could easily be amended to fall in line</p> <p>13 more closely with, you know, sort of a more</p> <p>14 acceptable deviation.</p> <p>15 He also offered his opinion, though,</p> <p>16 that no plan had been struck, in his</p> <p>17 understanding, for a deviation of -- for the</p> <p>18 deviation that he had provided in that plan.</p> <p>19 Q. But you would agree, it still required</p> <p>20 tinkering?</p> <p>21 A. I believe that would be a fair way to</p> <p>22 characterize it.</p> <p>23 Q. Would you agree that the committee</p> <p>24 heard and considered his feedback?</p> <p>25 A. I would agree that they heard his</p>	<p style="text-align: right;">Page 152</p> <p>1 of expression of opinions on that.</p> <p>2 Q. Let's go over that. Didn't Senator</p> <p>3 Campsen say he didn't even look at BVAP?</p> <p>4 A. He said that, to which response was</p> <p>5 that, you know, they're surrounded by these charts</p> <p>6 of racial numbers. And two, I would say that I</p> <p>7 doubt very seriously Senator Campsen created a</p> <p>8 map. It's the staff that are creating the maps.</p> <p>9 Q. Are you saying you don't believe him</p> <p>10 about BVAP?</p> <p>11 A. I'm not saying I don't believe him,</p> <p>12 no.</p> <p>13 Q. Other than that, what statements are</p> <p>14 you aware of where Republican members of the</p> <p>15 subcommittee or the committee discussed BVAP and</p> <p>16 wanting to keep the 1st limited in terms of BVAP?</p> <p>17 A. I'm saying that that came up</p> <p>18 repeatedly from opponents who were arguing that</p> <p>19 this was the rationale for limiting the ability of</p> <p>20 black voters in CD 1 to get their candidate of</p> <p>21 choice elected.</p> <p>22 Q. From those statements alone from the</p> <p>23 opponents, you then opine that Republicans wanted</p> <p>24 to keep CD 1 limited in terms of BVAP?</p> <p>25 A. Where is the line and question, if you</p>
<p style="text-align: right;">Page 151</p> <p>1 testimony.</p> <p>2 Q. Why do you think they didn't consider</p> <p>3 it? Why the qualification?</p> <p>4 A. Again, I'm not in their minds. I</p> <p>5 suppose insofar as they heard it, they considered</p> <p>6 it.</p> <p>7 Q. In that same vein, on Page 43, if</p> <p>8 you're not in their minds, then why did you offer</p> <p>9 the opinion that Republicans wanted to maintain</p> <p>10 the status quo with CD 6 as the minority-majority</p> <p>11 district and keep the other districts, especially</p> <p>12 the first, limited in terms of BVAP?</p> <p>13 A. This is the argument that was made</p> <p>14 repeatedly, that they're packing and cracking.</p> <p>15 Q. So that's not your opinion; you're</p> <p>16 saying that was just expressed as a recitation of</p> <p>17 events?</p> <p>18 A. I'm saying that's supported by members</p> <p>19 of the public and members of the legislature</p> <p>20 making that case.</p> <p>21 Q. But not any Republicans, right?</p> <p>22 A. Correct.</p> <p>23 Q. You didn't rely on any of their</p> <p>24 statements to make that decision, did you?</p> <p>25 A. I wouldn't say I relied on their lack</p>	<p style="text-align: right;">Page 153</p> <p>1 don't mind?</p> <p>2 Q. Sure. It is in Subsection M. I</p> <p>3 believe it's the third sentence.</p> <p>4 A. So they repeatedly asserted that they</p> <p>5 needed to maintain CD 6 as such, the result of</p> <p>6 which would, you know, be limiting black influence</p> <p>7 in the other district.</p> <p>8 Q. Is CD 6 as drawn in the map located in</p> <p>9 the majority-minority district?</p> <p>10 A. Right.</p> <p>11 Q. No. Is it?</p> <p>12 A. I believe it's just below 50 percent.</p> <p>13 Q. In the next paragraph you mention,</p> <p>14 again -- you insinuate that Senator Campsen's</p> <p>15 statement about the benefits of two congressmen is</p> <p>16 not true. Is that your opinion?</p> <p>17 A. I'm saying there's no evidence in the</p> <p>18 record that anyone provided that argument at any</p> <p>19 point. It had never come up in the publicly</p> <p>20 available record up to that point.</p> <p>21 Q. Do you have any reason to not believe</p> <p>22 him when he said constituents told him that?</p> <p>23 A. Constituents may have told him that,</p> <p>24 but no one submitted that in written testimony.</p> <p>25 No one brought it up in any of the hearings.</p>

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<p style="text-align: right;">Page 154</p> <p>1 There was reference made to the feedback.</p> <p>2 Could he have heard it at a cafe</p> <p>3 somewhere or on the golf course? I don't know.</p> <p>4 Maybe.</p> <p>5 Q. Do you have any idea what the</p> <p>6 political affiliation was of the vast majority of</p> <p>7 people who testified at public hearings?</p> <p>8 A. I have no clue.</p> <p>9 Q. Let's take this a step further.</p> <p>10 Earlier in your report you made representations of</p> <p>11 what former Representative Cunningham said about</p> <p>12 what his former constituents told him about the</p> <p>13 1st District, correct?</p> <p>14 A. He expressly said he had heard this,</p> <p>15 yes, from his constituents.</p> <p>16 Q. Right. So Senator Campsen said the</p> <p>17 same thing. Upon what methods or reliable</p> <p>18 principles are you relying to make these</p> <p>19 credibility determinations between Senator Campsen</p> <p>20 and former Congressman Joe Cunningham?</p> <p>21 A. Because what former Congressman</p> <p>22 Cunningham was saying that he had heard from</p> <p>23 constituents was something that had come up</p> <p>24 repeatedly, otherwise, in the public record. This</p> <p>25 assertion about two representatives for Charleston</p>	<p style="text-align: right;">Page 156</p> <p>1 his point that indicated that people -- you know,</p> <p>2 that other lawmakers didn't think that his</p> <p>3 argument held much weight.</p> <p>4 Q. But you agree that it would be up to</p> <p>5 the court to assign credibility determinations,</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. You don't know any of these people, do</p> <p>9 you?</p> <p>10 A. No.</p> <p>11 Q. So this is all based on you just</p> <p>12 watching hearings online?</p> <p>13 A. Reading the transcripts, the rest of</p> <p>14 the record, et cetera.</p> <p>15 Q. On that note, did you primarily review</p> <p>16 transcripts, or did you watch the hearings?</p> <p>17 A. Both.</p> <p>18 Q. Both. What percentage would you</p> <p>19 assign to each?</p> <p>20 A. I watched the entirety of the video</p> <p>21 and read the transcripts in entirety.</p> <p>22 Q. So you're not suggesting that you're</p> <p>23 qualified to pick who is right and who is wrong in</p> <p>24 those settings, right?</p> <p>25 A. That will be up to the court.</p>
<p style="text-align: right;">Page 155</p> <p>1 appears out of thin air.</p> <p>2 It is pointed out also to not really</p> <p>3 hold rational weight. I mean, the idea that</p> <p>4 Congressman Clyburn and Congressman Mace are</p> <p>5 walking in lock step in Congress is absurd. Just</p> <p>6 take for example, I believe, Congressman Clyburn</p> <p>7 was the only one to vote for the infrastructure</p> <p>8 bill.</p> <p>9 So I mean, this is not just me</p> <p>10 opining. This is pointed out in the proceeding</p> <p>11 that, again, this idea that the two congressmen or</p> <p>12 congress people representing the city or the metro</p> <p>13 area are always acting in concert is not really</p> <p>14 supported by the fact.</p> <p>15 Q. Is that what he said?</p> <p>16 A. Who?</p> <p>17 Q. It's beneficial because they act in</p> <p>18 concert? Isn't the point that it's good to have</p> <p>19 the House Majority Whip representing the Port of</p> <p>20 Charleston, which is a primary economic engine for</p> <p>21 South Carolina, and when he's not the majority, to</p> <p>22 have a Republican who also represents the</p> <p>23 interests of Charleston? Are you suggesting that</p> <p>24 that's a bad thing?</p> <p>25 A. I'm saying that there was pushback on</p>	<p style="text-align: right;">Page 157</p> <p>1 Q. On Pages 43 to 46, this is, I believe,</p> <p>2 the final full Senator Judiciary Committee</p> <p>3 meeting. Do you see that in your report,</p> <p>4 Dr. Bagley?</p> <p>5 A. Yes.</p> <p>6 Q. Again, in the context of Republicans</p> <p>7 presenting criteria, is the tenor of your report</p> <p>8 not seeking to undermine their arguments by what</p> <p>9 Democrats say? Is that an unfair characterization</p> <p>10 of your report?</p> <p>11 A. I think so.</p> <p>12 Q. How would you describe what we're</p> <p>13 reading here?</p> <p>14 A. Narrative recounting of the sequence</p> <p>15 of events.</p> <p>16 Q. You made judgment calls on what to</p> <p>17 include, correct?</p> <p>18 A. Yes.</p> <p>19 Q. You agreed earlier you used some</p> <p>20 persuasive language, correct?</p> <p>21 A. Occasionally.</p> <p>22 Q. So this isn't a fully objective thing,</p> <p>23 right? You're trying to make a point; are you</p> <p>24 not?</p> <p>25 A. No. I'm trying to lay the record</p>

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<p style="text-align: right;">Page 158</p> <p>1 before the court. I don't think that the fact</p> <p>2 that I've used a few adjectives here and there</p> <p>3 would discount the objectivity of the entire</p> <p>4 report.</p> <p>5 Q. Then why is the report reading as</p> <p>6 trying to discount what Republicans said?</p> <p>7 A. You cut out again, I'm sorry.</p> <p>8 Q. Why is the tenor of your report</p> <p>9 disagreeing with what Republicans said?</p> <p>10 A. That may be the tenor that you take</p> <p>11 away from it, but that's not my intention.</p> <p>12 Q. So your intention was to provide a</p> <p>13 totally neutral recitation of events?</p> <p>14 A. I'm laying the record before the</p> <p>15 court. It will be up to the court whether they</p> <p>16 read it with that tenor or not.</p> <p>17 Q. So you weren't asked to find racial</p> <p>18 discrimination in this case?</p> <p>19 A. No.</p> <p>20 Q. Why do you discredit the asserted</p> <p>21 justifications of geographical concerns,</p> <p>22 constituents consistency, minimal precinct splits,</p> <p>23 and preservation of core?</p> <p>24 A. The first part of the question was why</p> <p>25 do I what? You don't have to recite the</p>	<p style="text-align: right;">Page 160</p> <p>1 BY MR. TRAYWICK:</p> <p>2 Q. Of course. What recent risk history</p> <p>3 or what recent evidence, I should say, do you rely</p> <p>4 upon as history of voting rights discrimination to</p> <p>5 support your conclusion here?</p> <p>6 A. I mean, what's in the report, what we</p> <p>7 discussed earlier, which -- everything we've been</p> <p>8 discussing here today.</p> <p>9 Q. Can you give me a year of the most</p> <p>10 recent thing you contend is relevant as evidence</p> <p>11 of discrimination and voting rights?</p> <p>12 A. Well, we discussed the photo ID case.</p> <p>13 We discussed --</p> <p>14 (Crosstalk)</p> <p>15 Q. -- Park, right?</p> <p>16 A. Right. We discussed the Section 5</p> <p>17 objections from the 2010. We discussed the COVID</p> <p>18 litigation and so on.</p> <p>19 Q. 2010s?</p> <p>20 A. I'm sorry, the 2000 OTs (sic), I'm</p> <p>21 sorry.</p> <p>22 Q. You think the COVID litigation is</p> <p>23 related to the voting rights discrimination? You</p> <p>24 don't think it had to do with just COVID?</p> <p>25 A. That had to do with mechanisms that</p>
<p style="text-align: right;">Page 159</p> <p>1 guidelines again.</p> <p>2 Q. Why do you discredit those assertions?</p> <p>3 A. I don't intend to discredit those</p> <p>4 assertions at all. All I'm doing is faithfully</p> <p>5 reporting the opposition and the arguments between</p> <p>6 the opposition and the supporters.</p> <p>7 Q. Did you see Senator Campsen's quote on</p> <p>8 Page 44 that you included, saying that, "Zoom</p> <p>9 meeting is not weighted heavier"?</p> <p>10 A. Yes.</p> <p>11 Q. There are other ways to receive input,</p> <p>12 correct?</p> <p>13 A. Right.</p> <p>14 Q. Would you agree that the current plan</p> <p>15 maintains the same BVAP in the Congressional</p> <p>16 District 1 as the prior plan?</p> <p>17 A. It's roughly similar, yes.</p> <p>18 Q. Page 49, going to the "Summary of</p> <p>19 Information For the Court to Consider" section.</p> <p>20 Dr. Bagley, what recent evidence do you rely upon</p> <p>21 as history of voting rights discrimination to</p> <p>22 support your conclusion?</p> <p>23 MR. INGRAM: Objection.</p> <p>24 THE WITNESS: Could you restate,</p> <p>25 please, Mr. Traywick?</p>	<p style="text-align: right;">Page 161</p> <p>1 were going to disproportionately affect black</p> <p>2 voters.</p> <p>3 Q. You agree the witness requirement had</p> <p>4 been on the books for 50 years before the</p> <p>5 plaintiffs challenged it?</p> <p>6 A. Yeah, those witness requirements date</p> <p>7 back to the same time as, you know, majority</p> <p>8 member -- the multimember districts, membered</p> <p>9 posts, these diluted schemes. So that's not</p> <p>10 surprising that that was put in place at that</p> <p>11 time.</p> <p>12 Q. Do you think it's surprising that no</p> <p>13 one challenged it until COVID?</p> <p>14 A. Do I think it's what?</p> <p>15 Q. Surprising that no one challenged it</p> <p>16 until COVID?</p> <p>17 A. I am not sure I would characterize it</p> <p>18 as surprising.</p> <p>19 Q. As we discussed earlier, the U.S.</p> <p>20 Supreme Court stayed the ruling about the witness</p> <p>21 requirement, correct?</p> <p>22 A. Yes.</p> <p>23 Q. Were you aware that the plaintiffs</p> <p>24 then dismissed the lawsuit after that?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">Page 162</p> <p>1 Q. Are you aware that the General 2 Assembly passed election reform this session? 3 A. Yes. 4 Q. Are you aware that that retained the 5 witness requirement? 6 A. Yes. 7 Q. Are you aware that it got rid of the 8 excuse requirement? 9 A. Yes. 10 Q. Are you aware that that passed with 11 large bipartisan support? 12 A. I don't know what the exact vote was 13 on that, but if you represent that. 14 Q. Would you agree that the General 15 Assembly during COVID got rid of the excuse 16 requirement before both the primary and the 17 general election in 2020? 18 A. Could you restate, I'm sorry? 19 Q. Sure. Were you aware that the General 20 Assembly temporarily got rid of the witness -- not 21 the witness requirement -- the excuse requirement 22 for both the primary and the general election in 23 2020? 24 A. Temporarily, right. 25 Q. They now, after seeing how it worked,</p>	<p style="text-align: right;">Page 164</p> <p>1 value. 2 Q. I believe that's all the questions I 3 have about your initial report. Do you have any 4 other opinions regarding your initial report that 5 we haven't covered thus far? 6 A. No. 7 Q. At this time let's turn to your 8 rebuttal report. 9 MR. TRAYWICK: I believe this will be 10 marked as Exhibit -- are we on Exhibit 6 or 7? 11 MR. INGRAM: 7. 12 MR. TRAYWICK: Thank you. 13 (Exhibit 7, Dr. Bagley Congressional 14 Rebuttal Report, marked for identification.) 15 BY MR. TRAYWICK: 16 Q. I'll put that up on the screen. Do 17 you see that, Dr. Bagley? 18 A. Yes. And I have it here, a clean 19 copy. 20 Q. Excellent. Thank you. 21 At the beginning of your report, you 22 recognize that Sean Trende did not mention 23 anything about your report or Arlington Heights, 24 correct? 25 A. That's correct.</p>
<p style="text-align: right;">Page 163</p> <p>1 agreed to get rid of it permanently, correct? 2 A. Yes. 3 Q. So are you suggesting any illicit or 4 discriminatory motive behind that? 5 A. That's really not the subject of my 6 report. It's sort of, in terms of getting into 7 the weeds in the details, that is really outside 8 of the scope. 9 Q. I'm trying to draw the line from that 10 redistricting, right, because the evidence of 11 discrimination has to be probative of the 12 decisions which were made earlier, right? 13 A. Right. 14 Q. Dr. Bagley, did you consider any other 15 possibilities here aside from race? 16 A. Of course. Politics, for example. 17 Q. Can you point me to any examples in 18 your report where you assign credibility to a 19 Republican's statement regarding legislative 20 intent? 21 A. I don't know how you would 22 characterize "assign credibility." 23 Q. Or took them at face value without 24 saying what Democrats said to undermine it? 25 A. I think it's all presented at face</p>	<p style="text-align: right;">Page 165</p> <p>1 Q. So what was the purpose of you 2 drafting a rebuttal report? 3 A. I was asked to examine it and to offer 4 my opinions as to whether it supported or 5 undermined any of my findings, even if it didn't 6 respond within that same framework. 7 Q. Findings, what do you mean by that? 8 A. Anything that I put forth in my 9 report. 10 Q. I'm trying to better understand it. 11 The last half of your report, you said, was an 12 historical account of the legislative record, 13 right? 14 A. But in my summation, I said that it's 15 my opinion that there is evidence here that the 16 court might use to find an inference of 17 discriminatory intent. 18 Q. That section was written with an eye 19 towards that conclusion, correct? 20 A. It wasn't written with an eye towards 21 that. That's the conclusion I came to after 22 having reviewed all of that. 23 Q. If Mr. Trende did not mention 24 Arlington Heights or other things about your 25 report, what was the purpose of your rebuttal?</p>

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Page 166	<p>1 MR. INGRAM: Objection.</p> <p>2 THE WITNESS: The purpose of the</p> <p>3 rebuttal was simply to examine that report and</p> <p>4 offer my opinion on it as it relates to my report</p> <p>5 in any way.</p> <p>6 BY MR. TRAYWICK:</p> <p>7 Q. On Page 2 of your report, if you turn</p> <p>8 to that.</p> <p>9 A. Yes.</p> <p>10 Q. Thank you. Is it your position that</p> <p>11 Trende does not rely on any contemporaneous</p> <p>12 statements surrounding the Congressional plan of</p> <p>13 passage?</p> <p>14 A. The sentence says that: "He does not</p> <p>15 speak to the history of discrimination."</p> <p>16 He may reference some contemporaneous</p> <p>17 statements. I seem to recall it was simply an</p> <p>18 analysis of -- to what may have been the</p> <p>19 justifications for certain aspects of the plan.</p> <p>20 Q. That were articulated, though,</p> <p>21 correct?</p> <p>22 A. I'm sorry?</p> <p>23 Q. That were articulated, correct?</p> <p>24 A. Right.</p> <p>25 Q. The members have repeatedly called the</p>	Page 168	<p>1 overpopulated, and one was 12 percent</p> <p>2 underpopulated, correct?</p> <p>3 A. Right.</p> <p>4 Q. Why do you take issue with Trende</p> <p>5 expressing politics as a driver behind the</p> <p>6 Congressional plan that was enacted?</p> <p>7 A. No one ever said that. Not only that,</p> <p>8 but it was that -- that was put forth as an</p> <p>9 accusation and flatly denied, in fact, at one</p> <p>10 point.</p> <p>11 Q. Wasn't that in the context of being</p> <p>12 accused of a partisan gerrymandering and not just</p> <p>13 that politics was involved?</p> <p>14 A. I don't understand the difference.</p> <p>15 Q. Well, the Supreme Court, has it not,</p> <p>16 has repeatedly said that politics are fine, the</p> <p>17 question becomes when it's too much and when it</p> <p>18 becomes an unlawful partisan gerrymander. Would</p> <p>19 you agree with that?</p> <p>20 A. Yes. They didn't say we didn't, you</p> <p>21 know, go too far; this is -- you know, we didn't</p> <p>22 engage in -- well, politics was never put forth as</p> <p>23 a motivating factor by anybody in the materials</p> <p>24 that I reviewed.</p> <p>25 Q. Which included what?</p>
Page 167	<p>1 enacted plan a "minimal change plan"?</p> <p>2 A. Staff described it that way.</p> <p>3 Q. How about members?</p> <p>4 A. Potentially, yes.</p> <p>5 Q. Do you have any reason to disagree</p> <p>6 with Mr. Trende's opinions, the changes to the</p> <p>7 post-2010 Congressional map were, quote, "modest"?</p> <p>8 A. I know that some members considered</p> <p>9 them to be more significant than others.</p> <p>10 Q. Did you have occasion to look at the</p> <p>11 core retention scores for each of the seven</p> <p>12 districts in the enacted plan?</p> <p>13 A. At one point in time, yes.</p> <p>14 Q. Would you agree that five districts</p> <p>15 scored in the 90s?</p> <p>16 A. Yes, if memory serves. Was the one</p> <p>17 outlier -- how many did you say?</p> <p>18 Q. I said five.</p> <p>19 A. So two outliers, probably one of which</p> <p>20 was CD 1.</p> <p>21 Q. Right. So one scored 82, and another</p> <p>22 one in the high 80s. That would have been CD 1</p> <p>23 and CD 6. Does that sound right?</p> <p>24 A. Yes.</p> <p>25 Q. Of course, one was 12 percent</p>	Page 169	<p>1 A. What were the materials I reviewed?</p> <p>2 The sequence of events, the hearings, the</p> <p>3 transcripts, the legislative floor debates, and so</p> <p>4 on.</p> <p>5 Q. Do you agree that the court in cases</p> <p>6 only prevents post hoc justification after passage</p> <p>7 of the plan?</p> <p>8 A. Could you say it again, please?</p> <p>9 Q. Would you agree with me that the case</p> <p>10 law only prevents post hoc justifications after</p> <p>11 passage of the plan?</p> <p>12 MR. INGRAM: Objection.</p> <p>13 THE WITNESS: Yeah, I'm not intimately</p> <p>14 familiar enough with that particular aspect of the</p> <p>15 case law.</p> <p>16 BY MR. TRAYWICK:</p> <p>17 Q. Well, assuming it was, does it matter</p> <p>18 when in the process members vote or explain their</p> <p>19 justifications for the enacted plan as long as</p> <p>20 it's prior passage, in your opinion?</p> <p>21 A. I know that they offered</p> <p>22 justifications at every step of the way, and that</p> <p>23 was not among those justifications listed that</p> <p>24 were put forth.</p> <p>25 Q. Would you agree that for a lot of</p>

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<p style="text-align: right;">Page 170</p> <p>1 members, in the beginning, they may not have had a</p> <p>2 ton of time to study it, but had time to study the</p> <p>3 plan as it progressed? Would you agree with that?</p> <p>4 MR. INGRAM: Objection.</p> <p>5 THE WITNESS: I suppose that's true.</p> <p>6 BY MR. TRAYWICK:</p> <p>7 Q. Are you assuming bad faith by them</p> <p>8 offering various justifications?</p> <p>9 MR. INGRAM: Objection.</p> <p>10 THE WITNESS: I'm not assuming bad</p> <p>11 faith. I'm just simply saying that this never</p> <p>12 came up.</p> <p>13 BY MR. TRAYWICK:</p> <p>14 Q. So do you have any opinions about the</p> <p>15 debate that was had on the plan and whether</p> <p>16 justifications offered were credible?</p> <p>17 A. I am not sure how that's relevant to</p> <p>18 the rebuttal report. Maybe just ask again or</p> <p>19 rephrase.</p> <p>20 Q. Sure. I'll tell you how it's</p> <p>21 relevant. On Page 2, it says: "Lawmakers did not</p> <p>22 seriously consider issues of core retention."</p> <p>23 Upon what evidence do you rely to make</p> <p>24 that assertion?</p> <p>25 A. That didn't come up until very, very</p>	<p style="text-align: right;">Page 172</p> <p>1 it came in? Because it's during the debate about</p> <p>2 the plan, why does which committee meeting or</p> <p>3 which hearing it arose in matter, from your</p> <p>4 perspective?</p> <p>5 A. I don't understand why it wouldn't</p> <p>6 matter.</p> <p>7 Q. Can you explain why it matters?</p> <p>8 A. Well, it matters because it's not</p> <p>9 something that was discussed at all for these</p> <p>10 many, many weeks and months, and then all of a</p> <p>11 sudden it's not just something that comes up, but</p> <p>12 something that comes up repeatedly, repeatedly,</p> <p>13 repeatedly.</p> <p>14 I think if anybody reviewing anything</p> <p>15 were to see something just pop out of thin air and</p> <p>16 then be, like, repeatedly pounced upon, you would</p> <p>17 think that's significant in some way, shape, or</p> <p>18 form.</p> <p>19 Q. Do you know when in the process</p> <p>20 Senators were able to focus on Congressional</p> <p>21 redistricting?</p> <p>22 A. Senators broadly, outside of the</p> <p>23 committee?</p> <p>24 Q. Any of them?</p> <p>25 A. I don't know their personal schedules,</p>
<p style="text-align: right;">Page 171</p> <p>1 late in the process. In fact, Mr. Opperman</p> <p>2 brought it up in regards to the whole county plan,</p> <p>3 and then all of a sudden it became a talking</p> <p>4 point. I mean, it's not something that up to that</p> <p>5 point had ever come up in the proceeding, at least</p> <p>6 in the public record.</p> <p>7 Q. Would you agree that preservation of</p> <p>8 cores and constituent consistency were both</p> <p>9 factors adopted in the very first meeting of the</p> <p>10 Senate Redistricting Subcommittee and Guidelines</p> <p>11 for Redistricting?</p> <p>12 A. They were adopted. That was part of</p> <p>13 the guidelines that were adopted, but it never</p> <p>14 came up again at all until late in the process.</p> <p>15 Q. Prior to passage, though, right?</p> <p>16 A. At the very tail end.</p> <p>17 Q. Why is that significant, in your mind?</p> <p>18 A. Because it seems as if it was, you</p> <p>19 know, only something that was brought in at the</p> <p>20 very end as a late-stage justification.</p> <p>21 Q. So you don't believe it?</p> <p>22 A. I'm not saying that.</p> <p>23 Q. Then what are you saying?</p> <p>24 A. About what?</p> <p>25 Q. How do you think that's relevant when</p>	<p style="text-align: right;">Page 173</p> <p>1 if that's what you mean.</p> <p>2 Q. Sure. So then why infer a nefarious</p> <p>3 motive about when they brought up justifications?</p> <p>4 MR. INGRAM: Objection.</p> <p>5 THE WITNESS: I'm simply reading</p> <p>6 Mr. Trende's report and responding and saying that</p> <p>7 it's significant to me that this was not an issue</p> <p>8 until very late in the process.</p> <p>9 BY MR. TRAYWICK:</p> <p>10 Q. So then take it a step further. And</p> <p>11 why is it significant to you? What does that</p> <p>12 show, in your view?</p> <p>13 A. It shows me that possibly this is</p> <p>14 something that an attorney said, hey, you could</p> <p>15 focus on this, and this will let this pass muster.</p> <p>16 Q. Do you think attorneys advise</p> <p>17 Democrats on things to say and put in the public</p> <p>18 record?</p> <p>19 A. Sure.</p> <p>20 Q. You seem to take issue with</p> <p>21 phraseology here. Would you agree that everyone</p> <p>22 knew what the benchmark plan meant?</p> <p>23 A. That everyone knew what that meant?</p> <p>24 Q. Yes.</p> <p>25 A. And referring to the existing or 2010</p>

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Page 174	<p>1 plan?</p> <p>2 Q. Right.</p> <p>3 A. I think they understood what was meant</p> <p>4 by that.</p> <p>5 Q. Do you know one way or the other if</p> <p>6 Senators or their staff consulted with the</p> <p>7 Republican National Redistricting Trust in</p> <p>8 drafting the plan?</p> <p>9 A. My understanding is that Chairman</p> <p>10 Jordan said that their input was received. I</p> <p>11 don't know the nature of that. I just know that</p> <p>12 it came off at the hearing with former</p> <p>13 Representative Cunningham, and it was later said</p> <p>14 by Chairman Jordan that their input had been</p> <p>15 received.</p> <p>16 Q. Do you know whether Mr. Cunningham had</p> <p>17 any firsthand knowledge as to whether that</p> <p>18 occurred?</p> <p>19 A. I don't know what Mr. Cunningham had</p> <p>20 personal knowledge of.</p> <p>21 Q. Even if they did, what would be the</p> <p>22 problem with that? That's just politics, right?</p> <p>23 A. Well, certainly people seem to take</p> <p>24 issue with it over the course of the hearings.</p> <p>25 And I think you have to just pose it with the fact</p>	Page 176	<p>1 has played in redistricting?</p> <p>2 A. I mean, I don't -- it's been a while</p> <p>3 since I've read Rucho, so I could not present to</p> <p>4 you the particulars of that opinion.</p> <p>5 Q. Do you agree that politics does play a</p> <p>6 role in redistricting, regardless of the party in</p> <p>7 charge and regardless of the level of government?</p> <p>8 A. I understand that the Supreme Court</p> <p>9 has said that it's acceptable up to a point.</p> <p>10 Q. On Page 3, about Senator Harpootlian's</p> <p>11 proposal for guidelines, are you aware that the</p> <p>12 vote not to accept some of his guidelines was a</p> <p>13 bipartisan one?</p> <p>14 A. Yes.</p> <p>15 Q. Have courts repeatedly recognized that</p> <p>16 incumbency protection is a proper consideration in</p> <p>17 redistricting?</p> <p>18 A. Yes.</p> <p>19 Q. So was there any specific point for</p> <p>20 including the fact that the subcommittee did not</p> <p>21 adopt Senator Harpootlian's plan or guidelines?</p> <p>22 A. Where is this on Page 3?</p> <p>23 Q. Yes.</p> <p>24 A. Where on the page, I'm sorry?</p> <p>25 Q. I'm sorry. The bottom paragraph.</p>
Page 175	<p>1 that members of the committee are saying we</p> <p>2 ourselves didn't have anything to do with the</p> <p>3 drafting of the map, so why consult a national</p> <p>4 entity when you're not even consulting the members</p> <p>5 of the committee itself?</p> <p>6 Q. But you don't know one way or another</p> <p>7 whether that occurred, right, as we already</p> <p>8 established?</p> <p>9 A. Whether what occurred?</p> <p>10 Q. Whether those conversations occurred</p> <p>11 or whether they played a role in the map?</p> <p>12 A. According to their own telling of it,</p> <p>13 they -- Harpootlian at one point said, "This group</p> <p>14 had more input than I did," in this opinion.</p> <p>15 Q. Did he know that, or was he asking</p> <p>16 questions before he made that assertion?</p> <p>17 MR. INGRAM: Objection.</p> <p>18 THE WITNESS: I can just tell you that</p> <p>19 there are instances where he and others said that</p> <p>20 they had little to no input in the process.</p> <p>21 BY MR. TRAYWICK:</p> <p>22 Q. Have you read Rucho V. Common Cause?</p> <p>23 A. Broadly familiar with it.</p> <p>24 Q. Since you're an historian, did you</p> <p>25 read the Court's history of the role that politics</p>	Page 177	<p>1 A. I think the point there is that he</p> <p>2 suggested the guidelines be lifted as a hierarchy</p> <p>3 with the preservation of the core of the district</p> <p>4 last in all considerations, and that was not</p> <p>5 adopted.</p> <p>6 Q. Is it your opinion that anything was</p> <p>7 wrong with the process because folks disagreed</p> <p>8 with those guidelines?</p> <p>9 MR. INGRAM: Objection.</p> <p>10 THE WITNESS: Not necessarily.</p> <p>11 BY MR. TRAYWICK:</p> <p>12 Q. Do you recall saying in your last</p> <p>13 deposition that Backus was haphazardly litigated?</p> <p>14 A. Yes.</p> <p>15 Q. Do you realize that he was counsel of</p> <p>16 record for that case?</p> <p>17 A. I do. If memory serves, the court did</p> <p>18 not find the plaintiffs' expert to be credible.</p> <p>19 Q. And in your own report you recognize</p> <p>20 that the court found the defendants disproved any</p> <p>21 racial discriminatory intent, right?</p> <p>22 A. Right.</p> <p>23 Q. With regard to Mr. Cunningham's</p> <p>24 testimony, you recognize he's running for</p> <p>25 governor, right?</p>

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Page 178	<p>1 A. I do.</p> <p>2 Q. Do you think any of that testimony at</p> <p>3 either hearing had to do with politics?</p> <p>4 A. It's inherently so, yes. It's not</p> <p>5 like former Representative Cunningham came forth</p> <p>6 with -- or was the only person to come forth with</p> <p>7 the concerns that he did.</p> <p>8 Q. In both of your reports, Dr. Bagley,</p> <p>9 it mentions this looming Republican National</p> <p>10 Redistricting Trust, but you also seem to indicate</p> <p>11 that politics is nowhere mentioned regarding the</p> <p>12 map. How do you reconcile those positions?</p> <p>13 MR. INGRAM: Objection.</p> <p>14 THE WITNESS: Well, it took the</p> <p>15 accusation from Mr. Cunningham for that to come</p> <p>16 up, number one. Number two, the point is not that</p> <p>17 politics had nothing to do with it; I'm saying</p> <p>18 that nobody put forth the notion that what they</p> <p>19 were doing was trying to take or to -- yes, to</p> <p>20 take CD 1 out of competitive territory.</p> <p>21 BY MR. TRAYWICK:</p> <p>22 Q. The primary argument there advanced by</p> <p>23 Mr. Cunningham was that Charleston needed to be</p> <p>24 kept whole, correct?</p> <p>25 A. That was one of the focal points in</p>	Page 180	<p>1 Representative King was on the</p> <p>2 unsuccessful voting side of the plan, correct?</p> <p>3 A. Right.</p> <p>4 Q. Throughout your report and your</p> <p>5 rebuttal, you emphasized what opponents to the</p> <p>6 legislation said, correct?</p> <p>7 A. Not trying to emphasize it. I would</p> <p>8 say that just cuts back again to the dearth of</p> <p>9 commentary to those who voted in favor.</p> <p>10 Q. So then if you think that's relevant,</p> <p>11 do you think that their comments are relevant to</p> <p>12 legislative intent?</p> <p>13 A. Yes.</p> <p>14 Q. So then do you think his comment that</p> <p>15 he said: "The plan did nothing but empower one</p> <p>16 political party for the next ten years," is</p> <p>17 indicative that partisan advantage was used?</p> <p>18 A. So then why do we have to hear it from</p> <p>19 him? Why do we have to hear about the motivations</p> <p>20 of those who voted in favor from Representative</p> <p>21 King.</p> <p>22 Q. That wasn't my question.</p> <p>23 A. Could you use that in terms of</p> <p>24 inferring intent? Sure.</p> <p>25 Q. Certainly you're not suggesting that</p>
Page 179	<p>1 his testimony, yes.</p> <p>2 Q. You're aware it hasn't been whole for</p> <p>3 at least 50 years?</p> <p>4 A. Since it was drawn as a</p> <p>5 majority-minority district, yes.</p> <p>6 Q. That includes court-drawn and</p> <p>7 court-approved plans, correct?</p> <p>8 A. Yes.</p> <p>9 Q. Again, a lot of the legislative</p> <p>10 history here seems to focus on what opponents to</p> <p>11 the legislation said.</p> <p>12 I believe on Page 6 of your report, if</p> <p>13 you wouldn't mind turning there with me, you</p> <p>14 recognize that Representative King said, "The map</p> <p>15 did nothing but empower one particular party for</p> <p>16 the next ten years"?</p> <p>17 A. Yes.</p> <p>18 Q. So if you think what opponents say is</p> <p>19 relevant to legislative intent, do you believe</p> <p>20 that that is relevant to whether partisan</p> <p>21 advantage was used in this map?</p> <p>22 A. Could you restate, please? I'm sorry</p> <p>23 to ask you to do that so many times.</p> <p>24 Q. No. Sure. It was probably a bad</p> <p>25 question.</p>	Page 181	<p>1 members of the General Assembly could only use</p> <p>2 comments made by the public in offering their own</p> <p>3 reasons for passing a map, right?</p> <p>4 A. Right.</p> <p>5 Q. So then throughout the report, you</p> <p>6 know, you mention certain principles of</p> <p>7 redistricting that members of the public said, but</p> <p>8 then when members rely on those, you discredit</p> <p>9 them because they're not linked to exactly what</p> <p>10 the public said.</p> <p>11 MR. INGRAM: Objection.</p> <p>12 BY MR. TRAYWICK:</p> <p>13 Q. I'll give you an example. So</p> <p>14 Opperman, "preserving district cores," and ...</p> <p>15 A. Yes, Opperman is the first person to</p> <p>16 really substantively bring it up.</p> <p>17 Q. And then traditional and geographical</p> <p>18 and things like that. So if Senators who then</p> <p>19 defended the plan offered those as justifications,</p> <p>20 are you saying they couldn't just because they</p> <p>21 were not expressed as Mr. Opperman expressed them?</p> <p>22 A. They weren't expressed at all up to</p> <p>23 that point.</p> <p>24 Q. They were expressed before they</p> <p>25 passed, right?</p>

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Page 182	<p>1 A. At the 11th hour.</p> <p>2 Q. Again, what does that have to do with</p> <p>3 whether that's a valid justification or not? Are</p> <p>4 you saying that's not a valid justification</p> <p>5 because of when they asserted it?</p> <p>6 A. The court can determine whether</p> <p>7 there's value in that or not.</p> <p>8 Q. So you agree you're not qualified to</p> <p>9 do that, to evaluate credibility of legislative</p> <p>10 intent, correct?</p> <p>11 A. I'm not making a determination myself</p> <p>12 of legislative intent.</p> <p>13 Q. Coming pretty close, though, right?</p> <p>14 MR. INGRAM: Objection.</p> <p>15 I want to take a break.</p> <p>16 MR. TRAYWICK: Let me ask just a couple</p> <p>17 more questions, then I'll be at a logical breaking</p> <p>18 point, if you don't mind.</p> <p>19 MR. INGRAM: Perfect.</p> <p>20 BY MR. TRAYWICK:</p> <p>21 Q. Do you think perhaps that Senators had</p> <p>22 an opportunity to review and study the plan, and</p> <p>23 that's when changes were made and justifications</p> <p>24 were offered prior to its passage?</p> <p>25 A. If we're talking about the members</p>	Page 184	<p>1 where it is?</p> <p>2 Q. Yes. I'm trying to find it. It's in</p> <p>3 my notes.</p> <p>4 A. Let me just say that I attended no</p> <p>5 meetings.</p> <p>6 Q. Fair enough.</p> <p>7 MR. TRAYWICK: We can take a quick</p> <p>8 break. And then I think I'll be rounding third,</p> <p>9 coming home.</p> <p>10 MR. INGRAM: Perfect. We'll come back</p> <p>11 at 3:40.</p> <p>12 (A recess was taken.)</p> <p>13 MR. TRAYWICK: Back on the record.</p> <p>14 BY MR. TRAYWICK:</p> <p>15 Q. Dr. Bagley, I'm sorry, I meant to ask</p> <p>16 you this: Have you spoken regarding the substance</p> <p>17 of your testimony with Mr. Ingram or any other</p> <p>18 attorneys during the breaks?</p> <p>19 A. No.</p> <p>20 Q. Do you agree that constituent</p> <p>21 consistency can be considered in tandem with other</p> <p>22 guidelines for redistricting?</p> <p>23 A. Yes. Sure. Yes.</p> <p>24 Q. Do you agree that the plan enacted for</p> <p>25 the 1st District follows natural geographical</p>
Page 183	<p>1 that are on the committee, I don't understand why</p> <p>2 it would not have come up at all up to that point,</p> <p>3 and they needed their other Senators that are not</p> <p>4 on the committee to have time to fully study</p> <p>5 something, but they're having conversations with</p> <p>6 staff. I don't understand why it would not come</p> <p>7 up at all when explaining the parameters of the</p> <p>8 map.</p> <p>9 Q. So you agree there were conversations</p> <p>10 with the staff, right?</p> <p>11 A. I assume that there were. I'm not</p> <p>12 privy to those.</p> <p>13 Q. Do you think Senators understand</p> <p>14 communities of interest in their areas?</p> <p>15 A. Of course.</p> <p>16 Q. On Page 6 of your report, you've said</p> <p>17 a couple times that you were at the meeting. You</p> <p>18 attended these virtually, though, correct?</p> <p>19 A. Where is this, I'm sorry?</p> <p>20 Q. Sorry, Page 6.</p> <p>21 A. You're referring to whom?</p> <p>22 Q. I think you said: "I was at the</p> <p>23 meeting."</p> <p>24 A. I don't believe that I said that. If</p> <p>25 I did, that was a mistake. Could you point me to</p>	Page 185	<p>1 boundaries?</p> <p>2 A. Yeah. Senator Campsen made that</p> <p>3 point.</p> <p>4 Q. He's from the Charleston area,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. He's chairman of the Fish, Game and</p> <p>8 Forestry Committee, correct?</p> <p>9 A. Yeah. I think he was -- didn't he --</p> <p>10 he's a ship captain of some sort, if memory</p> <p>11 serves.</p> <p>12 Q. So he had great knowledge of the</p> <p>13 waterways surrounding the Port of Charleston,</p> <p>14 correct?</p> <p>15 A. I would think so.</p> <p>16 Q. Do you agree that the enacted plan</p> <p>17 significantly reduces the number of precinct</p> <p>18 splits?</p> <p>19 A. That was one of the things that was</p> <p>20 touted about the plan.</p> <p>21 Q. Would you agree that members of the</p> <p>22 public voiced that concern?</p> <p>23 A. It came up a few times.</p> <p>24 Q. Do you agree, it can be confusing when</p> <p>25 you and your neighbor vote at the same precinct,</p>

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<p style="text-align: right;">Page 186</p> <p>1 but they're in different districts?</p> <p>2 A. That concern was voiced a time or two.</p> <p>3 Q. Would you agree that the General</p> <p>4 Assembly recognized and addressed that problem in</p> <p>5 the enacted plan?</p> <p>6 A. They made some precincts whole, yes.</p> <p>7 Q. You would agree, the General Assembly</p> <p>8 incorporated that public feedback into the plan?</p> <p>9 A. I would say that was among the</p> <p>10 considerations.</p> <p>11 Q. Would you agree, the General Assembly</p> <p>12 disagreed with some of the public testimony it</p> <p>13 received, such as keeping Charleston whole, and</p> <p>14 did not incorporate that into the plan?</p> <p>15 A. That is correct.</p> <p>16 Q. Would you agree that that's how</p> <p>17 legislation works? I mean, take some, disagree</p> <p>18 with them?</p> <p>19 MR. INGRAM: Objection.</p> <p>20 THE WITNESS: I suppose that's true.</p> <p>21 But I think the takeaway in terms of my reports</p> <p>22 would be that a few citizens here or there talked</p> <p>23 about precincts. Whereas, you had a very, very</p> <p>24 significant amount of testimony regarding</p> <p>25 Charleston throughout the process.</p> <p style="text-align: right;">Page 187</p> <p>1 BY MR. TRAYWICK:</p> <p>2 Q. So does the mere fact that the General</p> <p>3 Assembly chose not to keep Charleston whole render</p> <p>4 this a racial gerrymander?</p> <p>5 A. In and of itself, no.</p> <p>6 Q. On Page 9 of your report, if you don't</p> <p>7 mind flipping there with me. You mentioned that:</p> <p>8 "Some members of the public spoke about the</p> <p>9 precinct splits, but seemed to take the committee</p> <p>10 to task for not considering what else they had to</p> <p>11 say."</p> <p>12 Is that a fair reading of what you</p> <p>13 said? Or if not, can you explain?</p> <p>14 A. Is this which paragraph?</p> <p>15 Q. At the beginning, the first two.</p> <p>16 A. So they asked the committee not to</p> <p>17 split precincts, but also expressed their concerns</p> <p>18 about packing, cracking, and minority vote</p> <p>19 dilution.</p> <p>20 What was your question?</p> <p>21 Q. So with regard to -- I'm sorry, I'm</p> <p>22 down in the third paragraph, precinct splits and</p> <p>23 natural geographical boundaries. Do you agree, or</p> <p>24 is it your opinion that all of the concerns</p> <p>25 expressed by the public had to be considered</p>	<p style="text-align: right;">Page 188</p> <p>1 together, or that the General Assembly could agree</p> <p>2 with some and maybe not necessarily others?</p> <p>3 A. It could certainly elect to agree with</p> <p>4 some, agree with others, ignore others, dismiss</p> <p>5 others.</p> <p>6 Q. Do you have an opinion about the</p> <p>7 repeated call for a nonpartisan independent</p> <p>8 redistricting commission?</p> <p>9 A. I know that came up quite frequently.</p> <p>10 I know that that has been rejected.</p> <p>11 Q. For purposes of this cycle, that ship</p> <p>12 had already sailed, right?</p> <p>13 A. You did the cutting out thing again.</p> <p>14 I heard "ship sailed."</p> <p>15 Q. For purposes of this cycle that the</p> <p>16 committee constituted in doing its work, that ship</p> <p>17 had already sailed, right, in terms of --</p> <p>18 A. I understand that that was rejected,</p> <p>19 yes.</p> <p>20 Q. On Page 10, right before your</p> <p>21 conclusion, you rely upon a number of the public</p> <p>22 criticizing the committee for scheduling.</p> <p>23 You know, you're not suggesting that</p> <p>24 staff intentionally scheduled a meeting to</p> <p>25 interfere with Yom Kippur, are you?</p> <p style="text-align: right;">Page 189</p> <p>1 A. No.</p> <p>2 Q. Because, you would agree, it's</p> <p>3 difficult to schedule meetings with lots of</p> <p>4 different members' schedules and to find</p> <p>5 locations, particularly for those public hearings,</p> <p>6 right?</p> <p>7 MR. INGRAM: Objection.</p> <p>8 THE WITNESS: I understand that there</p> <p>9 are a number of considerations that would go into</p> <p>10 scheduling.</p> <p>11 BY MR. TRAYWICK:</p> <p>12 Q. You would agree, the Senate had a lot</p> <p>13 of public hearings around the state, right?</p> <p>14 MR. INGRAM: Objection.</p> <p>15 THE WITNESS: They had a number of</p> <p>16 hearings around the state.</p> <p>17 BY MR. TRAYWICK:</p> <p>18 Q. I'm not trying to take words out of</p> <p>19 your mouth, but I heard you say "a lot" earlier.</p> <p>20 I was trying to make sure I understood that</p> <p>21 recollection.</p> <p>22 A. Sure. I should say this is just one</p> <p>23 example of a number of people expressing their</p> <p>24 concerns over scheduling matters.</p> <p>25 Q. Right. But does that really have any</p>
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<p style="text-align: right;">Page 190</p> <p>1 significance on the legislative process and</p> <p>2 procedure? I mean, calendars are tough. You</p> <p>3 would agree, right?</p> <p>4 MR. INGRAM: Objection.</p> <p>5 THE WITNESS: I found it significant.</p> <p>6 The court can take it or leave it.</p> <p>7 BY MR. TRAYWICK:</p> <p>8 Q. So you find it significant that one</p> <p>9 member suggested -- one member of the public</p> <p>10 suggested that a hearing in Beaufort was</p> <p>11 intentionally held to conflict with the sundown of</p> <p>12 Yom Kippur?</p> <p>13 MR. INGRAM: Objection.</p> <p>14 THE WITNESS: First, I don't think that</p> <p>15 she said -- I don't think she accused them of</p> <p>16 doing it deliberately, as such. I would say I</p> <p>17 considered this alongside other concerns about</p> <p>18 scheduling, not in and of itself.</p> <p>19 BY MR. TRAYWICK:</p> <p>20 Q. Would you agree that redistricting was</p> <p>21 not the only thing going on in the Senate, in the</p> <p>22 Senators' professional lives, or in their personal</p> <p>23 lives?</p> <p>24 MR. INGRAM: Objection.</p> <p>25 THE WITNESS: I just lost battery power</p>	<p style="text-align: right;">Page 192</p> <p>1 A. Yes.</p> <p>2 Q. So the timeline was even more</p> <p>3 compressed than in prior redistricting cycles;</p> <p>4 would you agree with that?</p> <p>5 A. Yes.</p> <p>6 Q. Did you agree that that would have an</p> <p>7 effect on scheduling inherently?</p> <p>8 A. I suppose that would be of some</p> <p>9 effect, yes.</p> <p>10 Q. Were you also told of the</p> <p>11 court-imposed deadline by which the General</p> <p>12 Assembly needed to enact redistricting plans</p> <p>13 because the plaintiffs here had filed a lawsuit in</p> <p>14 Federal Court?</p> <p>15 A. I understand that that was -- there</p> <p>16 were pending deadlines.</p> <p>17 Q. At the end of your report, Dr. Bagley,</p> <p>18 it suggests that -- I'm sorry, at the bottom of</p> <p>19 Page 10: "Members of the public wanted the</p> <p>20 General Assembly to start from scratch."</p> <p>21 Do you see that? It's the last line</p> <p>22 there above the line, not the footnotes, but the</p> <p>23 last sentence above the line on Page 10. Do you</p> <p>24 see that?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 191</p> <p>1 in one of my headphones. I anticipate the other</p> <p>2 one -- losing it very soon. Could I take a minute</p> <p>3 or two and let me disconnect and simply have</p> <p>4 computer audio?</p> <p>5 MR. TRAYWICK: Of course. Yes. And</p> <p>6 I'm getting close, so no need to take a long</p> <p>7 break. Of course we'll accommodate you. Just let</p> <p>8 me know when you're ready.</p> <p>9 THE WITNESS: Are you able to hear me?</p> <p>10 MR. TRAYWICK: Yes, sir. Can you hear</p> <p>11 me?</p> <p>12 THE WITNESS: I can't hear you.</p> <p>13 (Discussion off record.)</p> <p>14 BY MR. TRAYWICK:</p> <p>15 Q. I think before that I was asking -- I</p> <p>16 mean, would you agree that redistricting is not</p> <p>17 the only thing going on in the Senators' lives as</p> <p>18 it relates to their Senate work or their</p> <p>19 professional work or even their personal lives?</p> <p>20 A. Of course.</p> <p>21 Q. As we established earlier, they're</p> <p>22 part-time, correct?</p> <p>23 A. Right.</p> <p>24 Q. The census data came in the late</p> <p>25 summer/early fall 2021; is that right?</p>	<p style="text-align: right;">Page 193</p> <p>1 Q. Was that required by or consistent</p> <p>2 with the guidelines adopted by the Senate</p> <p>3 Redistricting Subcommittee?</p> <p>4 A. That the map be drawn from scratch?</p> <p>5 Q. Right.</p> <p>6 A. No.</p> <p>7 Q. Would you agree that Will Roberts, who</p> <p>8 was in the first meeting, described the plan as a</p> <p>9 "minimal change plan"?</p> <p>10 A. He did say that at one point, yes.</p> <p>11 Q. Do you think that's consistent with</p> <p>12 the core preservation?</p> <p>13 A. I guess it depends on what you mean or</p> <p>14 what you want to emphasize in terms of core</p> <p>15 preservation. You know, is it strict percentage,</p> <p>16 or is it avoiding incumbency issues, pitting</p> <p>17 incumbents against each other, taking them out of</p> <p>18 their districts.</p> <p>19 Q. Do you agree that those concepts can</p> <p>20 be interrelated, the concepts of preservation of</p> <p>21 core, incumbency protection, and minimal change?</p> <p>22 A. Sure.</p> <p>23 Q. Is it your opinion that there's no</p> <p>24 evidence whatsoever that partisanship was used?</p> <p>25 A. I wouldn't say that. I would just say</p>

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<p style="text-align: right;">Page 194</p> <p>1 that members of the committees did not offer</p> <p>2 partisan advantage as an explanation during the</p> <p>3 process.</p> <p>4 Q. So on Page 11 of your report, it's the</p> <p>5 last, sort of, substantive paragraph before you</p> <p>6 reserve the right down there. You said: "There</p> <p>7 was no evidence whatsoever."</p> <p>8 Are you kind of walking that back a</p> <p>9 little bit now?</p> <p>10 A. No. I'm saying, among the materials</p> <p>11 that I reviewed, that there is no evidence with</p> <p>12 the express purpose behind this that that was the</p> <p>13 motivation.</p> <p>14 Q. But you're not suggesting that there</p> <p>15 was no partisan motivation behind it, are you?</p> <p>16 A. There may have been. I'm just saying</p> <p>17 it was not put forth at all during process as a</p> <p>18 justification.</p> <p>19 Q. Just to recount, the second half of</p> <p>20 your primary report and a good portion of your</p> <p>21 rebuttal report are your interpretation of the</p> <p>22 legislative history in this case?</p> <p>23 A. It's my narrative recounting of what</p> <p>24 transpired as it relates to the issues at hand.</p> <p>25 Q. From your perspective, correct?</p>	<p style="text-align: right;">Page 196</p> <p>1 BY MS. HOLLINGSWORTH:</p> <p>2 Q. Can you hear me, Dr. Bagley?</p> <p>3 A. Yes, I can.</p> <p>4 Q. If it's all right, I'll go ahead.</p> <p>5 I'm Jennifer Hollingsworth, here on</p> <p>6 behalf of the House defendants. We have met</p> <p>7 before at your deposition previously in this case.</p> <p>8 I don't have many questions. Counsel for the</p> <p>9 Senate did a good job of walking through all of</p> <p>10 the very important issues. But I will -- and I</p> <p>11 will do my very best not to plow through anything</p> <p>12 that he has already covered.</p> <p>13 If you could, let's look at your</p> <p>14 report for the Congressional portion, your initial</p> <p>15 report.</p> <p>16 A. All right.</p> <p>17 Q. Do you have it in front of you?</p> <p>18 A. I do.</p> <p>19 Q. In looking at -- let's see, I think if</p> <p>20 you could go to Page 4. And I know you answered</p> <p>21 questions from Mr. Traywick about this.</p> <p>22 But this paragraph right before you</p> <p>23 walk into this verbal background, that last</p> <p>24 sentence: "I conclude that this all supports a</p> <p>25 strong inference of discriminatory motive, though</p>
<p style="text-align: right;">Page 195</p> <p>1 MR. INGRAM: Objection.</p> <p>2 THE WITNESS: Insofar as I wrote it,</p> <p>3 it's my perspective.</p> <p>4 BY MR. TRAYWICK:</p> <p>5 Q. Dr. Bagley, do you intend to offer any</p> <p>6 additional opinions in this matter, other than the</p> <p>7 ones we have discussed today or in the reports?</p> <p>8 A. If I were provided with any other</p> <p>9 evidence, I may submit a supplement to my report.</p> <p>10 I don't anticipate that being the case, but it</p> <p>11 may.</p> <p>12 MR. TRAYWICK: I appreciate that.</p> <p>13 Well, given that we have some</p> <p>14 privilege issues over communications outstanding,</p> <p>15 I'm going to respectfully reserve the right to</p> <p>16 leave the deposition open. But at this time I'll</p> <p>17 turn it over to any co-counsel, brother parties</p> <p>18 who may have questions for you.</p> <p>19 I do appreciate your time, again,</p> <p>20 today. Thanks so much for working with me on all</p> <p>21 of these technical issues and getting through all</p> <p>22 of this stuff. I really do appreciate it.</p> <p>23 THE WITNESS: Of course. You're</p> <p>24 welcome.</p> <p>25 EXAMINATION</p>	<p style="text-align: right;">Page 197</p> <p>1 I decided to resist reaching a final conclusion,</p> <p>2 which is for the court to do."</p> <p>3 Do you see that, Dr. Bagley?</p> <p>4 A. Yes, I do.</p> <p>5 Q. This is different than the way you,</p> <p>6 sort of, addressed your preliminary, kind of,</p> <p>7 opinion or finding from your report in the House</p> <p>8 on the House plan; is that right?</p> <p>9 A. I don't recall exactly how I phrased</p> <p>10 it in that report, but if you represent that</p> <p>11 that's the case. It might be slightly different.</p> <p>12 Q. I'll represent that the similar</p> <p>13 language in that report was on Page 3: "In my</p> <p>14 opinion, the legislative record reveals a sequence</p> <p>15 of events that strongly supports an inference of</p> <p>16 discriminatory motive, given the nature and</p> <p>17 historical background of voter discrimination in</p> <p>18 South Carolina and the state's black citizens."</p> <p>19 Does that sound familiar to you?</p> <p>20 A. Sure. Yes.</p> <p>21 Q. Coming back to the way that you</p> <p>22 phrased it here on the Congressional plan, is</p> <p>23 there any particular reason or motivation for the</p> <p>24 change in the way you addressed your opinion in</p> <p>25 this instance, now saying that you conclude it</p>

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<p style="text-align: right;">Page 198</p> <p>1 supports a strong inference, though decidedly</p> <p>2 resist reaching the final conclusion? Can you</p> <p>3 tell me why?</p> <p>4 A. I don't think so. No. I mean,</p> <p>5 they're pretty similar, I think. I guess there is</p> <p>6 the additional phrase, "though I decided to resist</p> <p>7 reaching the final conclusion."</p> <p>8 I think that was the point I was</p> <p>9 attempting to make in the other report as well,</p> <p>10 even if I didn't spell it out in the exact same</p> <p>11 language.</p> <p>12 Q. So no specific reason that you recall</p> <p>13 why you, sort of, added language related to the</p> <p>14 Court's role in reaching a final conclusion?</p> <p>15 A. I can't recall. It may be that there</p> <p>16 was case law that I was reading that seemed</p> <p>17 significant to that. I honestly don't remember</p> <p>18 writing that any differently than I had written it</p> <p>19 in the previous report.</p> <p>20 Q. Turn to Page 16 of your report,</p> <p>21 please.</p> <p>22 A. All right.</p> <p>23 Q. So in the middle paragraph that starts</p> <p>24 with "Burton court," you have a -- well, take a</p> <p>25 moment to read that paragraph to yourself, if you</p>	<p style="text-align: right;">Page 200</p> <p>1 would have come from one of those sources?</p> <p>2 A. Correct.</p> <p>3 Q. You have a number of newspaper</p> <p>4 articles that you have cited in your footnotes for</p> <p>5 this -- I guess it would be "Historical</p> <p>6 Background" section of your Congressional report;</p> <p>7 is that fair?</p> <p>8 A. Yes.</p> <p>9 Q. All of these newspaper articles, did</p> <p>10 you collect them all yourself, or were any of</p> <p>11 these articles provided to you?</p> <p>12 A. None of this was provided to me. It's</p> <p>13 all my own research. And these days it's fairly</p> <p>14 easy to do because everything has been digitized.</p> <p>15 So these -- you know, in decades prior</p> <p>16 you would have to go to an archive and go through.</p> <p>17 I spent many an hour early on in my career looking</p> <p>18 through microfilm. But, fortunately, it's all</p> <p>19 been digitized, and it's all available online. So</p> <p>20 this is particularly helpful under the</p> <p>21 circumstances of the pandemic.</p> <p>22 So these are -- this is research that</p> <p>23 I was able to conduct online through digitized</p> <p>24 sources.</p> <p>25 Q. Including these newspaper articles,</p>
<p style="text-align: right;">Page 199</p> <p>1 would, just -- that starts with, "Burton court."</p> <p>2 (The witness reviews the document, as</p> <p>3 requested.)</p> <p>4 THE WITNESS: All right.</p> <p>5 BY MS. HOLLINGSWORTH:</p> <p>6 Q. You have some observations in here</p> <p>7 related to -- for example, you have here: "Black</p> <p>8 caucus members felt like they had been taken</p> <p>9 advantage of by white Democrats and agreed with</p> <p>10 Republicans to draw more heavily white districts</p> <p>11 than white Republicans could win and more</p> <p>12 majority-minority districts that black candidates</p> <p>13 could win."</p> <p>14 Do you see that language?</p> <p>15 A. I do.</p> <p>16 Q. Did you conduct any interviews as part</p> <p>17 of the development or preparation of this report?</p> <p>18 A. No.</p> <p>19 Q. Where did this information come from?</p> <p>20 A. So the footnotes on this paragraph are</p> <p>21 48 and 49. It looks like in 48 there are two</p> <p>22 articles from the State and one from Greenville</p> <p>23 News, and 49 looks like it's in reference to a</p> <p>24 Ruoff report, Pages 707 and 708.</p> <p>25 Q. So all of the content that I just read</p>	<p style="text-align: right;">Page 201</p> <p>1 like, for example, 1994 edition of the Greenville</p> <p>2 News?</p> <p>3 A. Yes.</p> <p>4 Q. With regard to any of the other</p> <p>5 resources -- so you had various books,</p> <p>6 periodicals, things of that nature -- were any of</p> <p>7 those sources provided to you, as opposed to</p> <p>8 sources that you independently located for use in</p> <p>9 your report?</p> <p>10 A. No. The only thing that was provided</p> <p>11 to me were the transcripts that we talked about, I</p> <p>12 think very early on, with Mr. Traywick.</p> <p>13 Q. In your Congressional plan report, you</p> <p>14 go through a much deeper detail of, for example,</p> <p>15 like, the DOJ Section 5 objection letters. You</p> <p>16 have, I think, for example, Page 21.</p> <p>17 A. Okay.</p> <p>18 Q. So it looks like, starting from the</p> <p>19 first paragraph: "By 2012," and then through the</p> <p>20 rest of the page. And your footnote just says,</p> <p>21 generally: "Civil Rights Division, Section 5</p> <p>22 objections, South Carolina," but the content</p> <p>23 addresses a number of issues or, you know, subject</p> <p>24 matters from a variety of letters that you had</p> <p>25 found online.</p>

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<p style="text-align: right;">Page 202</p> <p>1 My question: Did you review each and</p> <p>2 every one of these Section 5 letters and prepare</p> <p>3 this, or did you have any assistants help you in</p> <p>4 assessing all of these to pull out the information</p> <p>5 that's here at Page 21?</p> <p>6 A. I was able to review them myself.</p> <p>7 They're all -- helpfully, the Civil Rights</p> <p>8 Division -- you see the link there. It's whited</p> <p>9 out on my page because I don't have color ink in</p> <p>10 my printer at the moment -- but they're all</p> <p>11 available, sort of, on the same page. They're</p> <p>12 sorted out by state. So you're able to just very</p> <p>13 quickly say, you know, click through them.</p> <p>14 Not all of them are very lengthy.</p> <p>15 Some are, but usually it's only a page or two. So</p> <p>16 I had more time, obviously, since the House phase</p> <p>17 to, sort of, more thoroughly review those.</p> <p>18 Q. You did all of that independently; is</p> <p>19 that right?</p> <p>20 A. That's correct.</p> <p>21 Q. Page 24, in the middle of the page you</p> <p>22 reference Representative Govan: "Describing how</p> <p>23 the redistricting process has been challenged</p> <p>24 every single cycle since black citizens had first</p> <p>25 won the right to actually vote and elect</p>	<p style="text-align: right;">Page 204</p> <p>1 or not their view of an irregularity or complaint</p> <p>2 is relevant to what otherwise would be a normal</p> <p>3 procedural sequence?</p> <p>4 A. Well, in terms of the legislators, I</p> <p>5 would say that, obviously, they would understand</p> <p>6 good governance and normal legislative procedures</p> <p>7 and practices.</p> <p>8 In terms of the public, I would say</p> <p>9 that I, you know, wouldn't take any one individual</p> <p>10 citizen's input and give great weight to that. I</p> <p>11 think it would have to be a complex or, as I said</p> <p>12 earlier, a chorus of people concerned about</p> <p>13 something which would give that more weight.</p> <p>14 Q. So in terms of your opinions, how do</p> <p>15 we know where you have reached a finding or a</p> <p>16 conclusion that any particular complaint or issue</p> <p>17 that was raised that you address in the sequence</p> <p>18 is a departure from the normal procedural</p> <p>19 sequence?</p> <p>20 A. I tried -- and maybe I didn't do a</p> <p>21 good job, but I tried to summarize that at the</p> <p>22 beginning of, sort of, each section, rather than</p> <p>23 lump that off at the beginning of an end. I</p> <p>24 thought it read better to, sort of, identify those</p> <p>25 at the beginning of sections.</p>
<p style="text-align: right;">Page 203</p> <p>1 candidates of choice in the 1970s."</p> <p>2 You will agree with me that the</p> <p>3 redistricting process has not been successfully</p> <p>4 challenged in every single cycle, correct?</p> <p>5 A. That is true.</p> <p>6 Q. The Number 4 -- the fourth Arlington</p> <p>7 Heights factor that is identified on Page 3 of</p> <p>8 your report -- and I'll just read it: "Departures</p> <p>9 from the normal procedural sequence."</p> <p>10 A. Yes.</p> <p>11 Q. Where in your report do you lay out</p> <p>12 what, in your expert opinion as a historian, are</p> <p>13 the normal procedural sequences that you then are</p> <p>14 measuring the sequence of events in South Carolina</p> <p>15 against?</p> <p>16 A. Rather than lay it out like that, what</p> <p>17 I've done is convey where members of the public or</p> <p>18 members of the committees have indicated that they</p> <p>19 felt like there was significant procedural</p> <p>20 departures.</p> <p>21 Q. Certainly, you would agree with me</p> <p>22 that those legislators or the members of the</p> <p>23 public are not expert historians, right?</p> <p>24 A. Well, certainly not.</p> <p>25 Q. So in what way could we know whether</p>	<p style="text-align: right;">Page 205</p> <p>1 Q. Have you -- I think we talked about</p> <p>2 this at your last deposition. I believe you had</p> <p>3 testified that you were familiar with</p> <p>4 redistricting process in Alabama.</p> <p>5 Are there any other states that you</p> <p>6 have familiarized yourself with in terms of</p> <p>7 procedure for redistricting in the Southeast or</p> <p>8 elsewhere?</p> <p>9 A. Yeah. In terms of secondary source</p> <p>10 resource and reading case law, but a number of</p> <p>11 others. I haven't undertaken, obviously, a</p> <p>12 systematic study of another state. But obviously,</p> <p>13 again, you know, reading case law and studying</p> <p>14 secondary sources, you know, I'm familiar with the</p> <p>15 process, sort of broadly speaking.</p> <p>16 Q. In your opinion, what is the</p> <p>17 difference between core constituency or core</p> <p>18 reservation and incumbency considerations?</p> <p>19 A. I understand that they're listed under</p> <p>20 the same, sort of, sub-guidelines. Like I say, I</p> <p>21 think you could look at that a couple of ways.</p> <p>22 Core retention, to me, could mean or</p> <p>23 could be synonymous with avoiding contests between</p> <p>24 incumbents or removing an incumbent from their</p> <p>25 district, or, as Mr. Opperman put forth, it could</p>

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<p style="text-align: right;">Page 206</p> <p>1 be -- you know, it could reference a numerical 2 representation of the number of constituents who 3 are preserved in a given district. 4 Q. We had talked last time about your 5 work in Alabama on that redistricting matter, that 6 your review of the sequence of events there 7 included descriptions of instances where lawmakers 8 were recorded on tape making racist remarks. Do 9 you recall that? 10 A. Yes, I do. 11 Q. We discussed last time -- you agreed 12 with me -- that you hadn't come across anything 13 similar to that when you were reviewing materials 14 for the House plan; is that right? 15 A. That's correct. 16 Q. So with regard to everything that 17 you've reviewed and considered on the 18 Congressional plan here in South Carolina, have 19 you come across anything similar to what you saw 20 in Alabama, such as the racist remarks by 21 lawmakers that were recorded? 22 A. The only thing that I think is in the 23 report that's similar to that is the racist 24 characterization of Congressman Clyburn from that 25 campaign. I didn't come across anything analogous</p>	<p style="text-align: right;">Page 208</p> <p>1 Q. Did you also do further study of some 2 of those cases in terms of Backus and Burton and 3 such? Did you spend some more time on some of 4 those cases as well? 5 A. Yes. I think there's a, fair to say, 6 a more thorough discussion in this report of those 7 two cases. 8 Q. I think Mr. Traywick did ask you this: 9 As you sit here today, you're not aware of any 10 opinions that you would offer at the trial that 11 you have not addressed at some point today in your 12 testimony with Mr. Traywick or myself, as you sit 13 here today? 14 A. No. 15 Q. As you sit here today, is there 16 anything that you intend to go study or review as 17 a result of what you discussed here today prior to 18 offering testimony in court? 19 A. No. 20 MS. HOLLINGSWORTH: Let me take one 21 minute real quick. I think those are all my 22 questions, but give me just one minute to look. 23 (A recess was taken.) 24 MS. HOLLINGSWORTH: Dr. Bagley, I don't 25 have any other questions. I very much appreciate</p>
<p style="text-align: right;">Page 207</p> <p>1 to those particularly egregious statements from 2 that instance you reference in Alabama, no. 3 Q. Let me make sure that we don't get a 4 little clouded in the record. Are you talking 5 about the -- Congressman Clyburn, are you talking 6 about Page 15 of your report where you're 7 describing the 1980s? 8 A. Yes. Yes. 9 Q. My question is with regard to what you 10 reviewed for purposes of the House and the Senate 11 in the most recent redistricting cycle leading up 12 to the passage of the Congressional plan that is 13 now challenged in this lawsuit. Have you come 14 across anything similar to what you did in 15 Alabama, which were the instance where lawmakers 16 were record on tape making racist remarks? 17 A. Nothing analogous to that, no. 18 Q. I think since the last time you 19 prepared a report, you had done -- you've done 20 some more evaluation of other positions of 21 authority in our state that are held by black men 22 and black women; is that right? And you included 23 some more information, for example, about our 24 Chief Justice of the Supreme Court? 25 A. Yes.</p>	<p style="text-align: right;">Page 209</p> <p>1 your time this afternoon. 2 THE WITNESS: I'm sorry, 3 Ms. Hollingsworth, let me shut this off. I don't 4 understand why that happened. Can you hear me? 5 MS. HOLLINGSWORTH: Yes. Yes. Well, 6 now we can't hear you. I think that went 7 backwards. 8 THE WITNESS: We're good now. 9 MS. HOLLINGSWORTH: Believe it or not, 10 I don't have any other questions. I don't know if 11 counsel for the Election Commission is still on. 12 But I'm done. I thank you very much for your 13 time. 14 MS. TRINKLEY: This is Jane Trinkley. 15 I do not have any questions on behalf of the 16 Election Commission. 17 MR. INGRAM: I have some redirect, but 18 give me five minutes to get my thoughts together. 19 (A recess was taken.) 20 EXAMINATION 21 BY MR. INGRAM: 22 Q. I just have a few questions for you, 23 Dr. Bagley, on redirect. My first question is 24 during your discussion with Mr. Traywick, you 25 referenced Chair Jordan in reference to some of</p>

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<p style="text-align: right;">Page 210</p> <p>1 the questions related to the Senate process.</p> <p>2 Might you have meant Chair Rankin,</p> <p>3 rather than Jordan, related to the Senate?</p> <p>4 A. Right. Chairman Rankin was the head</p> <p>5 of the Senate Redistricting Committee, and</p> <p>6 Representative Jordan was head of the House Ad Hoc</p> <p>7 Committee.</p> <p>8 Q. Thank you.</p> <p>9 Dr. Bagley, do you recall</p> <p>10 Mr. Traywick's questions at the beginning of the</p> <p>11 deposition asking you when you began working on</p> <p>12 the Congressional case?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall when the South Carolina</p> <p>15 General Assembly passed a Congressional map?</p> <p>16 A. I don't remember the exact date, but I</p> <p>17 can thumb through here. The final passage was</p> <p>18 January 26th.</p> <p>19 Q. When did you start working on the</p> <p>20 Congressional report? Was it before or after the</p> <p>21 map was passed?</p> <p>22 A. It would have been after. So any work</p> <p>23 done previously would have been a part of the</p> <p>24 House phase.</p> <p>25 Q. Then I just have one last question for</p>	<p style="text-align: right;">Page 212</p> <p>1 COURT REPORTER: Would you let me know</p> <p>2 if he's reading and signing, and can I get orders</p> <p>3 on the record, please?</p> <p>4 MR. INGRAM: Yes. For plaintiffs, we</p> <p>5 would like a rough transcript, electronic. And we</p> <p>6 will read and sign as well.</p> <p>7 MR. TRAYWICK: I would like a rough,</p> <p>8 and then we'll take an electronic copy.</p> <p>9 MS. HOLLINGSWORTH: This is Jennifer</p> <p>10 Hollingsworth. We would also like the rough</p> <p>11 transcript. We will order an electronic copy. We</p> <p>12 do not need a word index.</p> <p>13 (The deposition was concluded at 4:30</p> <p>14 p.m.)</p> <p>15 (The witness, after having been advised</p> <p>16 of the right to read and sign this transcript,</p> <p>17 does not waive that right.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 211</p> <p>1 you. Dr. Bagley, you discussed the Arlington</p> <p>2 Heights framework with Mr. Traywick. Did the</p> <p>3 method you employed as an historian and political</p> <p>4 scientist overlap at all with the Arlington</p> <p>5 Heights factoring or Arlington Heights framework?</p> <p>6 A. Yes, they overlap.</p> <p>7 Q. How so?</p> <p>8 A. Well, we look at information from a</p> <p>9 number of different sources, and we understand</p> <p>10 that the past informs the present.</p> <p>11 MR. INGRAM: Thank you. That's all my</p> <p>12 questions.</p> <p>13 I also want it on the record,</p> <p>14 Mr. Traywick, we understand your position about</p> <p>15 keeping the deposition open. But for the record,</p> <p>16 we disagree for the basis that there is a need to</p> <p>17 keep it open for those communications we've</p> <p>18 referenced before.</p> <p>19 MR. TRAYWICK: Understood. And we'll</p> <p>20 talk offline about it. And if necessary, we'll</p> <p>21 move forward and protect our own interests. So</p> <p>22 thank you for that.</p> <p>23 No further questions from me.</p> <p>24 MS. HOLLINGSWORTH: None from me.</p> <p>25 Thank you very much.</p>	<p style="text-align: right;">Page 213</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2</p> <p>3 I, Roxanne M. Easterwood, Registered</p> <p>4 Professional Reporter and Notary Public for the</p> <p>5 State of South Carolina at Large, do hereby</p> <p>6 certify that the foregoing transcript is a true,</p> <p>7 accurate, and complete record.</p> <p>8 I further certify that I am neither</p> <p>9 related to nor counsel for any party to the cause</p> <p>10 pending or interested in the events thereof.</p> <p>11 Witness my hand, I have hereunto</p> <p>12 affixed my official seal this 29th day of June</p> <p>13 2022 at Charleston, Charleston County, South</p> <p>14 Carolina.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <div style="text-align: center;">  </div> <p style="text-align: center;">Roxanne M. Easterwood, RPR My Commission expires February 1, 2025</p>

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Page 214				Page 216			
1	I N D E X			1	Antonio Ingram, II		
2	Page	Line		2	aingram@naacpldf.org		
3	JOSEPH BAGLEY, PhD	4	3	3	July 13, 2022		
4	EXAMINATION	4	5	4	RE: The South Carolina State Conference Of The NAACP v. Alexander,		
5	BY MR. TRAYWICK			5	Thomas, Et Al		
6	EXAMINATION	195	25	6	6/29/2022, Joseph Bagley , PhD (#5278889)		
7	BY MS. HOLLINGSWORTH			7	The above-referenced transcript is available for		
8	EXAMINATION	209	20	8	review.		
9	BY MR. INGRAM			9	Within the applicable timeframe, the witness should		
10	CERTIFICATE OF REPORTER	213	1	10	read the testimony to verify its accuracy. If there are		
11				11	any changes, the witness should note those with the		
12	E X H I B I T S			12	reason, on the attached Errata Sheet.		
13	Page	Line		13	The witness should sign the Acknowledgment of		
14	Exhibit 1, Notice of	6	13	14	Deponent and Errata and return to the deposing attorney.		
15	Deposition, Certificate of			15	Copies should be sent to all counsel, and to Veritext at		
16	Service, Acceptance of			16	erratas-cs@veritext.com.		
17	Service, Subpoena Duces Tecum			17	Return completed errata within 30 days from		
18	Exhibit 2, Bagley CV	8	25	18	receipt of testimony.		
19	Exhibit 3, Invoices with	17	18	19	If the witness fails to do so within the time		
20	Attached Email Cover Pages,			20	allotted, the transcript may be used as if signed.		
21	Bates SCNAACP 3D 11412-11419			21			
22	Exhibit 4, Dr. Bagley	24	16	22	Yours,		
23	Congressional Plan Report			23	Veritext Legal Solutions		
24	Exhibit 5, Email	27	15	24			
25	Correspondence, Bates SCNAACP			25			
Page 215				Page 217			
1	CD 11420-11423			1	The South Carolina State Conference Of The NAACP v. Alexander,		
2	Exhibit 6, 2021 Redistricting	120	21	2	Thomas, Et Al		
3	Guidelines, SC Senate			3	Joseph Bagley , PhD (#5278889)		
4	Judiciary Committee			4	E R R A T A S H E E T		
5	Redistricting Subcommittee			5	PAGE____ LINE____ CHANGE_____		
6	Exhibit 7, Dr. Bagley	164	13	6	REASON_____		
7	Congressional Rebuttal Report			7	PAGE____ LINE____ CHANGE_____		
8				8	_____		
9				9	REASON_____		
10				10	PAGE____ LINE____ CHANGE_____		
11				11	_____		
12				12	REASON_____		
13				13	PAGE____ LINE____ CHANGE_____		
14				14	_____		
15				15	REASON_____		
16				16	PAGE____ LINE____ CHANGE_____		
17				17	_____		
18				18	REASON_____		
19				19	PAGE____ LINE____ CHANGE_____		
20				20	_____		
21				21	REASON_____		
22				22	_____		
23				23	_____		
24				24	Joseph Bagley , PhD Date		
25				25	_____		

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1 The South Carolina State Conference Of The NAACP v. Alexander,
Thomas, Et Al

2 Joseph Bagley , PhD (#5278889)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Joseph Bagley , PhD, do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.

10

11 _____

12 Joseph Bagley , PhD Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 _____ DAY OF _____, 20 ____.

16

17

18 _____

19 NOTARY PUBLIC

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